

SPECIMENS OF ARGUMENTATION
BAKER

ENGLISH

READINGS FOR

STUDENTS

"The virtue
of books is the
perfecting of
reason, which is
indeed the hap-
piness of man."

*Richard De
Bury.*

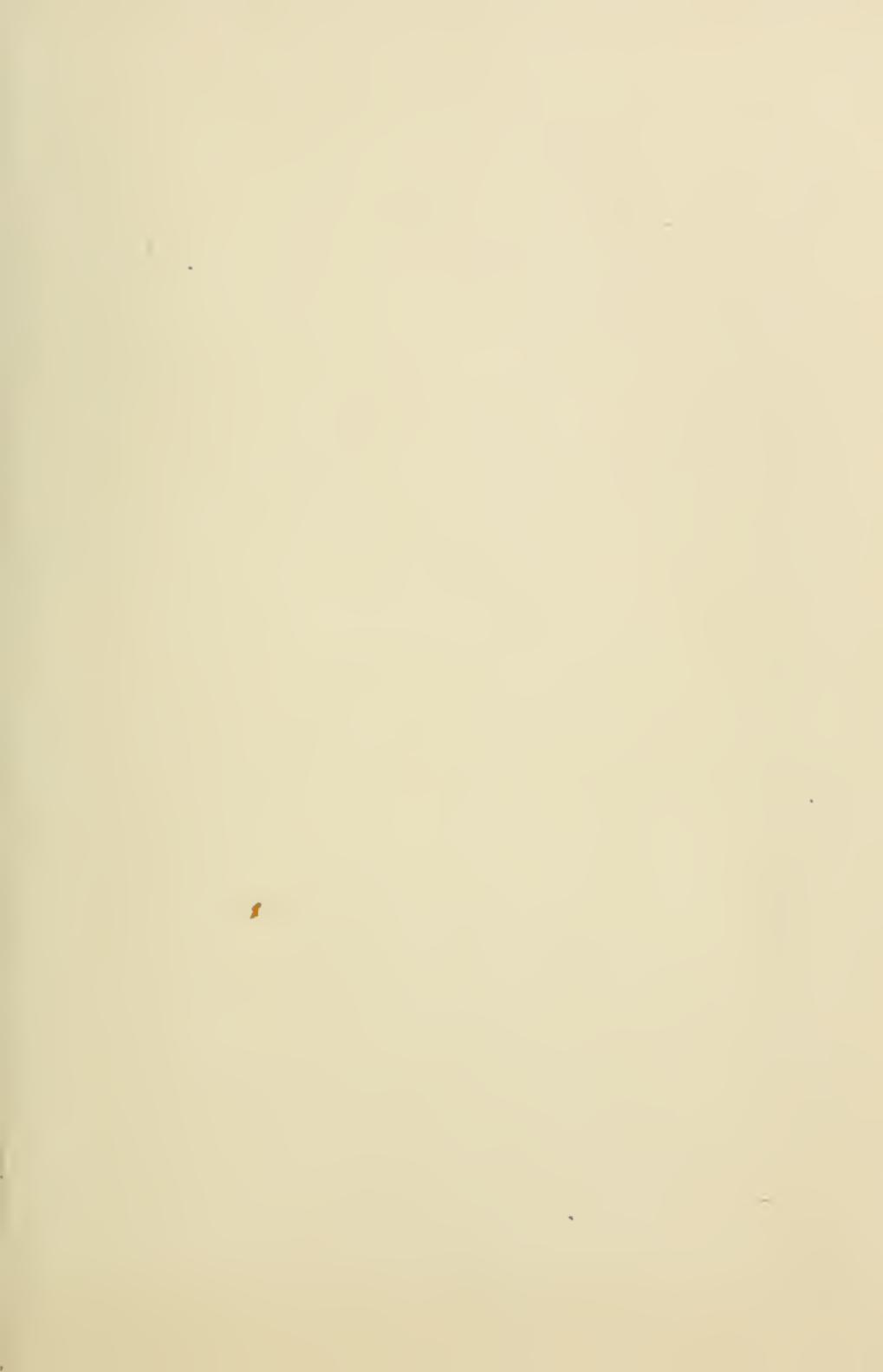
ENGLISH

READINGS FOR

STUDENTS

"On bokès for
to rede I me
delyte."

Chaucer.



English Readings for Schools

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Readings for Students

SPECIMENS
OF
ARGUMENTATION
MODERN

COMPILED BY

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SECOND EDITION, REVISED



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PREFACE.

THIS little book has been compiled to meet two needs that have arisen in the editor's experience with classes in Argumentative Composition at Harvard University and Wellesley College. The first need is for a small, inexpensive collection of specimens of argumentation, edited especially for classes in Argumentative Composition. Constantly students have asked : "Where can we find the speeches from which the illustrations in the lectures are drawn, and other arguments that illustrate the suggestions and the rules that have been given us ?" The difficulty in referring such students to the existing collections of speeches and arguments has been of several kinds. To become really familiar with the necessary illustrations, with the speeches chosen, a student must own the book containing them, but the large collections are too expensive for most students. The smaller and cheaper books almost surely lack one of the speeches most desired by the instructor. To ask a student to read one illustration here, another there, is to put the speeches as a set beyond his purse, or if he is to look up all in some library, to make too great a demand on his time. Moreover, nearly all of the collections contain many specimens

of oratory famous, not for their power as arguments but for mere brilliancy of style or for the conditions under which they were given. Students browsing in such books unguided—as is the case in nearly all the collections—by any notes to point out what is the really great argumentative work and why it is great, are pretty sure to be attracted by what is clever and entertaining merely, rather than by what is structurally perfect and convincing in argument. It has seemed worth while, then, to select a half-dozen arguments in which students could find corroboration of the lecturers' words and further illustrations of them, and to edit these carefully with notes to show the condition under which the arguments were uttered ; wherein their power lies ; and whence it comes.

The editor has tried, also, in his selecting, to find material that should show to the beginner in Argumentative Composition what, often, he does not seem to understand, that argumentation is not a thing apart, confined to law courts, but has its important place in literary and scientific work. For this purpose, Lord Mansfield on the Evans case, the "Junius" letter, and Professor Huxley's lecture, are printed side by side.

The second need arose from a special feature of the work in Argumentative Composition at Harvard College that may require a word of explanation. All the prescribed argumentative writing at the college has greatly improved since a system of briefs preliminary to the written arguments was arranged. By this system a student makes an outline for his argumentative essay, consisting of introductory headings and of

the headings of the brief proper. The former summarize, as briefly as possible, the facts that must be made clear before the argument itself can begin; the latter are all phrased as reasons for the conclusion to be reached, and are carefully correlated by numbers and letters, so that the relations of the different parts, the structure as a whole, and the meaning at every point, shall be clear to a reader. These briefs, corrected by the instructors for structural or other faults, are returned to the students, who revise them in accordance with the written suggestions of the instructors, and make the revised briefs the bases of their "Forensics," so-called.

A class, before drawing briefs from its own material, is asked to make a brief of some masterpiece of argumentation, that it may learn what a brief is, and may recognize the careful structure that underlies all great argumentation. To provide material for this first brief of all has been a problem. As Mr. Johnston¹ has noted, modern public speaking is losing the careful structure that belonged to the orations of the past — just what the student of brief work needs to study. Therefore, much that the collections of speeches contain is unavailable for briefs. Nor must the selection be long, for in analyzing a long argument a student will get hopelessly involved. Finally, a student cannot be asked to buy a book to get the material for but one exercise of the year. The editor hopes that this compilation will meet these difficulties that have faced him each year when a class was studying the drawing of briefs. Three of the selections, Lord Mansfield's speech, the "Junius" letter, and Professor Huxley's

¹ American Orations.

lecture, are so marked in structure that to draw a brief from any one of them should not be too difficult a task for a beginner in Argumentative Composition. So brilliant, too, are all of them as arguments that the analysis necessary for the brief will in its results more than repay the student. That the beginner may see what a brief is and the way in which it may be drawn from an argument, the brief of Lord Chatham's speech and the original have been printed.

Because some of the speeches were to be used for briefs, it has several times been difficult, in the editing, to point out in detail the method by which the great effects are gained, without giving such an outline of the speech that a student, reading it, could have no further difficulty in making a brief of the speech. If in any place the analysis of a speech seems inadequate the fault should be attributed to this reason, for in several places it seemed wisest to leave to the student, guided by his instructor, detailed analysis of methods.

The editor hopes, then, that the work will be useful in three ways : as a fund of illustration for lectures on Argumentative Composition which a class may easily possess in common with its instructor ; as material for training in the drawing of briefs ; and for analyses by the class or the instructor, by the methods used in the notes, not merely for structure but also for persuasive methods and argumentative skill.

Though the first four selections are intended especially to bear on the drawing of briefs, Lord Erskine's speech on the handling of evidence, and Henry

Ward Beecher's speech on persuasion, all of these illustrate more than one idea, and in the book as a whole, the student should find illustrations for nearly all, if not all, of the rudimentary rules for argumentation.

GEO. P.¹ BAKER.

CAMBRIDGE, MASS.,
September 18, 1893.

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DIRECTIONS FOR DRAWING A BRIEF.¹

A good brief should be divided into three parts: (1) The Introduction; (2) The Brief Proper; (3) The Conclusion.

1. *The Introduction* should state as concisely as possible, by suggestive phrases of a line or two, the facts necessary to an understanding of the discussion itself: namely, how the question arose; what are the facts admitted by both sides; and by definition and exposition, what is the exact point at issue. It should clear away all extraneous matter, and should place the essential idea clearly before the reader.

2. *The Brief Proper* should by a series of headings and subheadings very concisely make clear to any intelligent reader the development of the argument by which the writer expects to prove the affirmative or the negative of the question he has clearly stated in the Introduction. From all the evidence for and against him in the case, the writer should first select the main ideas that prove his conclusion. These he should arrange in a climactic order leading up to his conclusion, the strongest idea coming last under ordi-

¹ For further details in regard to drawing briefs, see Chapter IV of "Principles of Argumentation." G. P. Baker. Boston: Ginn & Co., 1895.

nary circumstances. Under these main ideas he should next place the ideas that support these but are not by themselves equal in importance to the main headings. In stating these subheadings he should be careful to keep the climactic order. All of the main headings and the subheadings should read as reasons for the conclusion. The correlation of all the parts should be distinctly marked by letters and numbers.

The Proof that a writer will use divides itself roughly into two parts: direct proof and refutation. When a writer simply states an idea of his own and supports it, that is direct proof; when he takes an idea urged against him by his opponent and tries to overcome it, he refutes. If the objection is a broad one,—to the writer's case as a whole,—it should stand by itself, marked refutation; if it is an objection to some division or subdivision of the writer's work, he will meet it best in treating that division or subdivision. That is, his idea is proved not only by proving *a.*, *b.*, and *c.*, reasons for it, but by disproving the statement *d.* made by his opponent.

3. *The Conclusion* simply sums up briefly the argument, showing clearly how it leads to the conclusion, which—unless it is given at the beginning as the proposition—should always be stated.

SPECIMEN BRIEF.¹

DRAWN FROM THE SPEECH OF LORD CHATHAM ON
HIS MOTION FOR THE IMMEDIATE REMOVAL OF THE
BRITISH TROOPS FROM BOSTON.

Introduction.

I.

The present course of the Ministry suggests unfairness.

II.

The Ministry has been guilty of unfairness, namely of misrepresentation, for

- (a) Their representations that led to the passage of the measures obnoxious to the American people have been proved false, for
 - (i) The ministers said that these measures would overawe the Americans, but the measures have solidified the resistance of the Americans.

III.

Therefore, the troops should be immediately withdrawn from Boston.

¹ For further illustration of briefs, good and bad, see "Principles of Argumentation."

IV.

But a hearer, in considering this attempt at justice, should remember that to try to be just to America is not necessarily to exempt her from all obedience to Great Britain,

Brief Proper.

I.

The removal of the troops is necessary, because

- A.** It will show the willingness of the English to treat amicably.
- B.** The resistance of the Americans was necessary because
 - I. The obnoxious acts of Parliament were tyrannical.
- C.** The means of enforcing the measures of Parliament have failed, for
 - I. The army of General Gage is “penned up—pinning in inglorious inactivity.”
 - II. The objection that the presence of this army in Boston is a safeguard is untrue, for
 - (a) It is powerless, and held in contempt.
 - (b) It is an irritation to the Americans.
 - (c) The objection that General Gage is needlessly inactive is untrue, for
 - (i) Any activity on his part would mean “civil and unnatural war.”
- D.** If Parliament tries by the aid of the army to enforce its measures, the result will be bad, for
 - I. If Parliament were victorious, it would be over an embittered people.

II. The troops are not strong enough to resist three million united, courageous people.

III. Persecution of these men whose fathers left their homes to escape it should cease, since

(a) The objection of the Ministry that the Americans "must not be heard" is unjust, since

(i) It "lumps the innocent with the guilty."

The statement that "the union in America cannot last" is untrue, for

I. The evidence of the so-called "commercial bodies" is unreliable, for

(a) They do not really represent the class for whom they profess to speak,

(b) And they are paid agents of the Government.

(c) Even if they did represent the commercial class of America, their judgment would be untrustworthy, for

(i) Not the commercial class, but the farming class, are the strength of a nation;

(2) And the American farmers are unitedly arrayed for liberty.

II. The evidence of an authority (Dr. Franklin plainly hinted) proves that the Americans, for the sake of liberty, would endure far more than they have as yet suffered, even war and rapine.

F. The statement that the Americans should be punished for illegal violence is untrue, for

- I. A chance for reconciliation should not be missed.
- II. Thirty thousand in Boston should not be punished for the fault of forty or fifty.
- III. Punishment means arousing the unappeasable wrath of the whole American people.
- IV. Even if the English people are victorious, they cannot control the great tracts of conquered country.
- V. The resistance should have been foreseen, for
 - (a) The spirit that resists in America is that of all English stock, that which established the essential maxim of English liberty, "No taxation without the consent of the taxed."
- VI. The resistance will become too strong to be overcome, for
 - (a) The English Whigs will aid them, for
 - (i) The spirit that moves the Americans is that which has always belonged to the Whigs.
 - (b) The Irish will aid them, for
 - (i) They have always maintained the ideas the Americans support.
 - (c) The means to oppose this united body is weak, for
 - (i) A few regiments in America and 18,000 men at home must oppose three million Americans, millions o' Englishmen, and all the Irish.

(2) And ministerial tricks against it will fail, for

(a) The result must inevitably be a "checkmate" for the ministers.

G. This removal of the troops must precede any other step, because

I. The fear and the resentment of the Americans must first of all be remedied;

II. While the troops remain, resentment will remain, for

(a) Any measures secured by force would be, with the army in Boston, doubly irritating.

(b) When, as is the case, force cannot be used, the mere presence of the army, though it is itself in danger, is irritating.

H The views of Congress are moderate and reasonable.

I. It is an old maxim that the first concession comes most fitly from the superior.

J. While every policy urges withdrawal of the troops, every danger warns the English from keeping to the old course, for

I. That means foreign war, for

(a) France and Spain are watching for an advantageous chance to interfere.

II. That means domestic trouble, for

(a) The king will lose all his power.

(b) The kingdom will be utterly undone.¹

¹ Note that a conclusion is not printed by itself because, as the proposition, it has been given in Introduction, III.

SPECIMENS OF ARGUMENTATION.

MATERIAL FOR BRIEFS.

Lord Chatham.

Born 1708. Died 1778.

ON A MOTION FOR AN ADDRESS TO HIS MAJESTY,
TO GIVE IMMEDIATE ORDERS FOR REMOVING HIS
TROOPS FROM BOSTON.

Delivered in the House of Lords, January 20, 1775.

[The insistence of the King that the duty on tea should be maintained, when all the other taxation of the Colonies had been abandoned, led, in 1773, to the outbreak at Boston, when the cargoes of the English tea ships were thrown into the harbor. The King, as a result of this action, seemed bent upon turning his American subjects into rebels by treating them as rebellious. The Ministry presented to and carried through Parliament several very determined measures,—bills to close the port of Boston, to deprive the Massachusetts Colony of its charter, to bring persons accused of capital offenses to England for trial,—and sent troops to Boston to enforce them. It was asserted by the ministers that these measures would separate Massachusetts from the rest of the colonies, and would overawe her. Instead, Massachusetts called out and armed her militia, and all the other states, except Georgia, took up her cause, sending delegates to the Congress which in September, 1774, met at Philadelphia. This Congress issued an “Address to the People of Great Britain,” stating the case of the Colonies. Still, though

this determined front was shown by the Colonies, they generally shrank from rising against the mother country. There seemed still to be a chance for reconciliation. Lord Chatham, who had steadily opposed the disastrous measures of Lord North and the King, hoped for much from concessions, and in January, 1775, took Dr. Franklin into his councils. On the twentieth of the month, when Lord Dartmouth, Secretary of State, laid before the House of Lords various papers concerning American affairs, Lord Chatham moved "An Address to his Majesty for the Immediate Removal of the Troops from Boston," and supported his motion with the following speech.]

MY LORDS: After more than six weeks' possession of the papers now before you, on a subject so momentous, at a time when the fate of this nation hangs on every hour, the Ministry have at length condescended to submit to the consideration of this 5 House, intelligence from America with which your Lordships and the public have been long and fully acquainted.

The measures of last year, my Lords, which have produced the present alarming state of America, 10 were founded upon misrepresentation. They were violent, precipitate, and vindictive. The nation was told that it was only a faction in Boston which opposed all lawful government; that an unwarrantable injury had been done to private property, for which the jus- 15 tice of Parliament was called upon to order reparation; that the least appearance of firmness would awe the Americans into submission, and upon only passing the Rubicon we should be "*sine clade victor,*"

That the people might choose their representatives 20 under the influence of those misrepresentations, the Parliament was precipitately dissolved. Thus the

nation was to be rendered instrumental in executing the vengeance of the administration on that injured, unhappy, traduced people.

But now, my Lords, we find that instead of suppressing the opposition of the faction at Boston, these measures have spread it over the whole continent. They have united that whole people by the most indissoluble of all bands—intolerable wrongs. The just retribution is an indiscriminate, unmerciful proscription of the innocent with the guilty, unheard and untried. The bloodless victory is an impotent general with his dishonored army, trusting solely to the pickaxe and the spade for security against the just indignation of an injured and insulted people.

15 My Lords, I am happy that a relaxation of my infirmities permits me to seize this earliest opportunity of offering my poor advice to save this unhappy country, at this moment tottering to its ruin. But, as I have not the honor of access to his Majesty, I will 20 endeavor to transmit to him, through the constitutional channel of this House, my ideas on American business, to rescue him from the misadvice of his present ministers. I congratulate your Lordships that the business is at last entered upon by the noble 25 Lord's [Lord Dartmouth] laying the papers before you. As I suppose your Lordships are too well apprised of their contents, I hope I am not premature in submitting to you my present motion.¹ [The motion was read.]

30 ¹ The prejudicial effect of this introduction should be noted. Lord Chatham, beginning with a statement of the delay of the Ministry in presenting to the Lords papers on American matters, which

I wish, my Lords, not to lose a day in this urgent, pressing crisis. An hour now lost in allaying ferment in America may produce years of calamity. For my own part, I will not desert, for a moment, the conduct of this weighty business, from the first to the last. 5 Unless nailed to my bed by the extremity of sickness, I will give it unremitting attention. I will knock at the door of this sleeping and confounded Ministry, and will rouse them to a sense of their danger.

When I state the importance of the colonies to this 10 country, and the magnitude of danger hanging over this country from the present plan of misadministration practiced against them, I desire not to be understood to argue for a reciprocity of indulgence between England and America. I contend not for indulgence, 15 but justice to America ; and I shall ever contend that the Americans justly owe obedience to us in a limited degree—they owe obedience to our ordinances of trade and navigation ; but let the line be skilfully drawn between the objects of those ordinances and 20 their private internal property. Let the sacredness of their property remain inviolate. Let it be taxable only by their own consent, given in their provincial assemblies, else it will cease to be property. As to the metaphysical refinements, attempting to show that the 25 Americans are equally free from obedience and com-

makes a hearer doubt the sincerity of the Ministry, passes to a direct charge that only misrepresentation (evidently by the Ministry, though this is not directly stated) led to actions of Parliament which resulted in the ignominy that Lord Chatham paints by an illustration. 30 The words of this illustration he carefully selected to goad his hearers to contempt for those guilty of the misrepresentation.

mmercial restraints, as from taxation for revenue, as being unrepresented here, I pronounce them futile, frivolous, and groundless.

When I urge this measure of recalling the troops from Boston, I urge it on this pressing principle, that it is necessarily preparatory to the restoration of your peace and the establishment of your prosperity. It will then appear that you are disposed to treat amicably and equitably ; and to consider, revise, and repeal, if it should be found necessary (as I affirm it will), those violent acts and declarations which have disseminated confusion throughout your empire.

Resistance to your acts was necessary as it was just ; and your vain declarations of the omnipotence of Parliament, and your imperious doctrines of the necessity of submission, will be found equally impotent to convince or to enslave your fellow-subjects in America, who feel that tyranny, whether *ambitioned* by an individual part of the Legislature, or the bodies who compose it, is equally intolerable to British subjects.

The means of enforcing this thraldom are found to be as ridiculous and weak in practice as they are unjust in principle. Indeed, I cannot but feel the most anxious sensibility for the situation of General Gage, and the troops under his command ; thinking him, as I do, a man of humanity and understanding ; and entertaining, as I ever will, the highest respect, the warmest love for the British troops. Their situation is truly unworthy ; penned up—pining in inglorious inactivity. They are an army of impotence. You may call them an army of safety and of guard ;

but they are, in truth, an army of impotence and contempt ; and, to make the folly equal to the disgrace, they are an army of irritation and vexation.

But I find a report creeping abroad that ministers censure General Gage's inactivity. Let them censure ⁵ him—it becomes them—it becomes their justice and their honor. I mean not to censure his inactivity. It is a prudent and necessary inaction ; but it is a miserable condition, where disgrace is prudence, and where it is necessary to be contemptible. This tame-¹⁰ness, however contemptible, cannot be censured ; for the first drop of blood shed in civil and unnatural war might be "*immedicabile vulnus.*"

I therefore urge and conjure your Lordships immediately to adopt this conciliating measure. I will ¹⁵ pledge myself for its immediately producing conciliatory effects, by its being thus well-timed ; but if you delay till your vain hope shall be accomplished of triumphantly dictating reconciliation, you delay forever. But, admitting that this hope (which in truth ²⁰ is desperate) should be accomplished, what do you gain by the imposition of your victorious amity ? You will be untrusted and unthanked. Adopt, then, the grace, while you have the opportunity, of reconciliation—or at least prepare the way. Allay the ferment ²⁵ preparing in America, by removing the obnoxious hostile cause—obnoxious and unserviceable ; for their merit can be only inaction : "*Non dimicare est vincere,*" their victory can never be by exertions. Their force would be most disproportionately exerted against ³⁰ a brave, generous, and united people, with arms in their hands, and courage in their hearts : three mil-

liions of people, the genuine descendants of a valiant and pious ancestry, driven to those deserts by the narrow maxims of a superstitious tyranny. And is the spirit of persecution never to be appeased? Are 5 the brave sons of those brave forefathers to inherit their sufferings, as they have inherited their virtues? Are they to sustain the infliction of the most oppressive and unexampled severity, beyond the accounts of history or description of poetry : “*Rhadamanthus habet 10 durissima regna, castigatque AUDITQUE.*” So says the wisest poet, and perhaps the wisest statesman and politician. But our ministers say *the Americans must not be heard.* They have been condemned *unheard.* The indiscriminate hand of vengeance has lumped 15 together innocent and guilty ; with all the formalities of hostility, has blocked up the town [Boston], and reduced to beggary and famine thirty thousand inhabitants.

But his Majesty is advised that the union in 20 America cannot last. Ministers have more eyes than I, and should have more ears ; but, with all the information I have been able to procure, I can pronounce it a union solid, permanent, and effectual. Ministers may satisfy themselves, and delude the 25 public, with the report of what they call commercial bodies in America. They are *not* commercial. They are your packers and factors. They live upon nothing, for I call commission nothing. I speak of the ministerial authority for this American intelligence—30 the runners for government, who are paid for their intelligence. But these are not the men, nor this the influence, to be considered in America, when we esti-

mate the firmness of their union. Even to extend the question, and to take in the really mercantile circle, will be totally inadequate to the consideration. Trade, indeed, increases the wealth and glory of a country ; but its real strength and stamina are to be 5 looked for among the cultivators of the land. In their simplicity of life is found the simpleness of virtue—the integrity and courage of freedom. These true, genuine sons of the earth are invincible ; and they surround and hem in the mercantile bodies, 10 even if these bodies (which supposition I totally disclaim) could be supposed disaffected to the cause of liberty. Of this general spirit existing in the British nation (for so I wish to distinguish the real and genuine Americans from the pseudo-traders I have 15 described) of this spirit of independence, animating the *nation* of America, I have the most authentic information. It is not new among them. It is, and has ever been, their established principle, their confirmed persuasion. It is their nature and their doctrine. 20

I remember, some years ago, when the repeal of the Stamp Act was in agitation, conversing in a friendly confidence with a person of undoubted respect and authenticity, on that subject, and he assured me with a certainty which his judgment and opportunity gave him, that these were the prevalent and steady principles of America—that you might destroy their towns, and cut them off from the superfluities, perhaps the conveniences of life, but that they were prepared to despise your power, and would not lament 25 30 their loss, while they have—what, my Lords ?—their *woods* and their *liberty*. The name of my authority,

if I am called upon, will authenticate the opinion irrefragably.²

If illegal violences have been, as it is said, committed in America, prepare the way, open the door of possibility for acknowledgment and satisfaction ; but proceed not to such coercion, such proscription ; cease your indiscriminate inflictions ; amerce not thirty thousand—oppress not three millions for the fault of forty or fifty individuals. Such severity of injustice must forever render incurable the wounds you have already given your colonies ; you irritate them to unappeasable rancor. What though you march from town to town, and from province to province ; though you should be able to enforce a temporary and local submission (which I only suppose, not admit), how shall you be able to secure the obedience of the country you leave behind you in your progress, to grasp the dominion of eighteen hundred miles of continent, populous in numbers, possessing valor, liberty, and resistance ?

This resistance to your arbitrary system of taxation might have been foreseen. It was obvious from the nature of things, and of mankind ; and, above all, from the Whiggish spirit flourishing in that country. The spirit which now resists your taxation in America is the same which formerly opposed loans, benevolences, and ship-money in England ; the same spirit which called all England “on its legs,” and by the Bill of Rights vindicated the English Constitution ; the same spirit which established the great fundamental, essential maxim of your liberties, *that no*

² Benjamin Franklin.

subject of England shall be taxed but by his own consent.³

This glorious spirit of Whiggism animates three millions in America, who prefer poverty with liberty to gilded chains and sordid affluence ; and who will die in defense of their rights as men, as freemen. What shall oppose this spirit, aided by the congenial flame glowing in the breast of every Whig in England, to the amount, I hope, of double the American numbers ? Ireland they have to a man. In that country, joined as it is with the cause of the colonies, and placed at their head, the distinction I contend for is and must be observed. This country superintends and controls their trade and navigation ; but they *tax themselves.* And this distinction between external and 15

³ Two main ideas underlie this speech, each skilfully selected for its persuasive appeal to the audience addressed and developed with masterly skill. The first, that all the existing troubles with America have resulted from misrepresentation by the Ministry, frees the nation at large from shame, disposes them to listen 20 to Lord Chatham's plea that a bad business brought about by misrepresentation cannot be bettered by pursuing the old policy. When this first idea and its corollary have been stated, Lord Chatham, to support his statement of the plan to be pursued, brings in the second idea, that from what his hearers prize as 25 perhaps their greatest inheritance from their fathers, the principle that a man shall not, without his consent, be taxed, the Americans, inheriting this idea from the same forefathers, took their inspiration for resistance. Logic and fairness, then,—two powerful appeals to the British mind,—demanded that a trouble which arose 30 because the English had by misrepresentation been made to misunderstand the Americans when standing firm for a principle equally dear to the English, should be overcome by prompt concessions from England.

internal control is sacred and insurmountable ; it is involved in the abstract nature of things. Property is private, individual, absolute. Trade is an extended and complicated consideration : it reaches as far as 5 ships can sail or winds can blow : it is a great and various machine. To regulate the numberless movements of its several parts, and combine them into effect for the good of the whole, requires the superintending wisdom and energy of the supreme power 10 in the empire. But this supreme power has no effect toward internal taxation ; for it does not exist in that relation ; there is no such thing, no such idea in this Constitution, as a supreme power operating upon property. Let this distinction then remain forever 15 ascertained ; taxation is theirs, commercial regulation is ours. As an American, I would recognize to England her supreme right of regulating commerce and navigation ; as an Englishman by birth and principle, I recognize to the Americans their supreme, unalienable 20 right in their property : a right which they are justified in the defense of to the last extremity. To maintain this principle is the common cause of the Whigs on the other side of the Atlantic and on this. “ ‘Tis liberty to liberty engaged,” that they will defend 25 themselves, their families, and their country. In this great cause they are immovably allied : it is the alliance of God and nature—immutable, eternal—fixed as the firmament of heaven.

To such united force, what force shall be opposed ? 30 What, my Lords ? A few regiments in America, and seventeen or eighteen thousand men at home ! The idea is too ridiculous to take up a moment of your

Lordships' time. Nor can such a national and principled union be resisted by the tricks of office, or ministerial manœuvre. Laying of papers on your table, or counting numbers on a division, will not avert or postpone the hour of danger. It must arrive, my Lords, unless these fatal acts are done away ; it must arrive in all its horrors, and then these boastful ministers, spite of all their confidence and all their manœuvres, shall be forced to hide their heads. They shall be forced to a disgraceful abandonment of their present measures and principles, which they avow, but cannot defend ; measures which they presume to attempt, but cannot hope to effectuate. They cannot, my Lords, they cannot stir a step ; they have not a move left ; they are *checkmated !*

15

But it is not repealing this act of Parliament, it is not repealing a piece of parchment, that can restore America to our bosom. You must repeal her fears and her resentments, and you may then hope for her love and gratitude. But now, insulted with an armed force posted at Boston, irritated with a hostile array before her eyes, her concessions, if you could force them, would be suspicious and insecure ; they will be "*irato animo*" [with angry spirit] ; they will not be the sound, honorable passions of freemen ; they will be the dictates of fear and extortions of force. But it is more than evident that you cannot force them, united as they are, to your unworthy terms of submission. It is impossible. And when I hear General Gage censured for inactivity, I must retort with indignation on those whose intemperate measures and improvident counsels have betrayed him into his

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present situation. His situation reminds me, my Lords, of the answer of a French general in the civil wars of France—M. Condé opposed to M. Turenne. He was asked how it happened that he did not take his adversary prisoner, as he was often very near him. “*J'ai peur*,” replied Condé, very honestly, “*j'ai peur qu'il ne me prenne* ;” *I'm afraid he'll take me.*

When your Lordships look at the papers transmitted us from America—when you consider their decency, firmness, and wisdom, you cannot but respect their cause, and wish to make it your own. For myself, I must declare and avow, that in all my reading and observation—and it has been my favorite study—I have read Thucydides, and have studied and admired the master-states of the world—that for solidity of reasoning, force of sagacity, and wisdom of conclusion, under such a complication of difficult circumstances, no nation or body of men can stand in preference to the general Congress at Philadelphia.
I trust it is obvious to your Lordships that all attempts to impose servitude upon such men, to establish despotism over such a mighty continental nation, must be vain, must be fatal. We shall be forced ultimately to retract; let us retract while we can, not when we must. I say we must necessarily undo these violent oppressive acts.⁴ They must be repealed. You *will* repeal them. I pledge myself for it, that you will, in the end, repeal them. I stake my reputation on it. I will consent to be taken for an idiot if they are not finally repealed. Avoid, then,

⁴ The Boston Port Bill and the act taking away the charter of Massachusetts.

this humiliating, disgraceful necessity. With a dignity becoming your exalted situation, make the first advances to concord, to peace, and happiness ; for that is your true dignity, to act with prudence and justice. That *you* should first concede is obvious, 5 from sound and rational policy. Concession comes with better grace and more salutary effect from superior power. It reconciles superiority of power with the feelings of men, and establishes solid confidence on the foundations of affection and gratitude. 10

So thought a wise poet and a wise man in political sagacity—the friend of Mecænas, and the eulogist of Augustus. To him, the adopted son and successor of the first Cæsar—to him, the master of the world, he wisely urged this conduct of prudence and dignity : 15
“ *Tuque prior, tu parce ; projice tela manu.*”

Every motive, therefore, of justice and of policy, of dignity and of prudence, urges you to alay the ferment in America by a removal of your troops from Boston, by a repeal of your acts of Parliament, and 20 by demonstration of amicable dispositions toward your colonies. On the other hand, every danger and every hazard impend to deter you from perseverance in your present ruinous measures. Foreign war hanging over your heads by a slight and brittle 25 thread ; France and Spain watching your conduct, and waiting for the maturity of your errors, with a vigilant eye to America and the temper of your colonies, more than to their own concerns, be they what they may. 30

To conclude, my Lords, if the ministers thus persevere in misadvising and misleading the King, I will

not say that they can alienate the affections of his subjects from his crown, but I will affirm that they will make the crown not worth his wearing. I will not say that the King is betrayed, but I will pronounce
5 that the kingdom is undone.⁵

⁵ In this brief, skilfully worded paragraph, Lord Chatham did much, suggesting even more than he said directly. Saying that he will not say certain things, he brings to the King's ear what are evidently popular charges against him, and hints at great possible
10 dangers for the King. Both of the statements should make the King apprehensive, the first, that he may lose the affection of his people; the second, that they may come to regard him as a mere tool of his ministers. Lord Chatham, with fine irony, apparently shrinks from two bold statements only to make two others less
15 specific, but more inclusive, and for King and people more terrifying. Warning the people of the great dangers of the time, he yet hints approvingly the steadiness of their loyalty to the King, and throwing the blame for existing troubles on the Ministry, turns the people toward the King. Threatening the King with great
20 possible dangers, he makes him feel his need of the support of the people, and turns him away from the Ministry, who alone are responsible for existing evils.

Lord Mansfield.

Born 1705. Died 1793.

SPEECH IN THE CASE OF THE CHAMBERLAIN OF LONDON AGAINST ALLAN EVANS.

Delivered in the House of Lords, February 4, 1767.

[“The city of London was in want of a new mansion house for the Lord Mayor, and resolved to build one on a scale of becoming magnificence. But, as the expense would be great, some ingenious churchmen devised a plan for extorting a large part of the money out of the Dissenters, who had for a number of years been growing in business and property, under the protection of the Toleration Act. The mode was this. A by-law of the city was passed, imposing a fine of £600 on any person who should be elected as sheriff and decline to serve. Some wealthy individual was then taken from the dissenting body, and by a concert among the initiated was chosen to the office of sheriff. Of course he was not expected to serve, for the Test and Corporation Acts rendered him incapable. He was, therefore, compelled to decline; and was then fined £600, under a by-law framed for the very purpose of extorting this money! Numerous appointments were thus made, and £15,000 were actually paid in; until it became a matter of mere sport to “roast a Dissenter,” and bring another £600 into the treasury toward the expenses of the mansion house.

“At length Allan Evans, a man of spirit, who had been selected as a victim, resolved to try the question. He refused to pay the fine, and was sued in the Sheriff’s Court. Here he pleaded his rights under the Toleration Act, but lost his cause. He appealed to the Court of Hustings, where the decision was affirmed. He then appealed to the Court of Common Pleas, where judgment went in his favor; the decisions of the courts below being unanimously reversed. The city now brought a writ of error through

their Chamberlain, and carried the case before the House of Lords. Here the subject was taken up by Lord Mansfield, who in common with all the judges but one of the Court of the King's Bench, was of opinion that Evans was protected by the Toleration Act, and exempted from the obligation to act as sheriff. 'These views he maintained in the following speech, which had great celebrity at the time, and is spoken of by Lord Campbell as 'one of the finest specimens of forensic eloquence to be found in our books.' The judgment of the Court of the King's Bench was affirmed by the House of Lords."—*Goodrich.*^{1]}]

MY LORDS: As I made the motion for taking the opinion of the learned judges, and proposed the question your Lordships have been pleased to put to them, it may be expected that I should make some farther motion, in consequence of the opinions they have delivered.²

In moving for the opinion of the judges, I had two views. The first was, that the House might have the benefit of their assistance in forming a right judgment ¹⁰ in this cause now before us, upon this writ of error.

The next was, that the question being fully discussed, the grounds of our judgment, together with their

¹ The notes marked "Goodrich" are reprinted by permission of Messrs. Harper & Brothers from Goodrich's "Select British Eloquence," 1852.

² In this speech a reader should note its remarkable compactness, brevity, and directness, and the careful exclusion, until the main argument is concluded, of any appeal to the feelings. Something of this compactness comes from the fact that Lord Mansfield spoke ²⁰ rather as a judge summing up a case, with the evidence of which his hearers were familiar, than as a lawyer who must show the value and significance of the evidence which he uses or combats. As the origin of the case, and its condition at the time of his speech, were known to all, he could make his introduction very brief. It

exceptions, limitations, and restrictions, might be clearly and certainly known, as a rule to be followed hereafter in all future cases of the like nature ; and this determined me as to the manner of wording the question, “ How far the defendant might, in the present case, be allowed to plead his disability in bar of the action brought against him ? ”

The question thus worded shows the point upon which your Lordships thought this case turned ; and the answer necessarily fixes a criterion, under what ¹⁰ circumstances, and by what persons, such a disability may be pleaded as an exemption from the penalty inflicted by this by-law, upon those who decline taking upon them the office of sheriff.

In every view in which I have been able to consider ¹⁵ this matter, I think this action cannot be supported.

If they rely on the Corporation Act ; by the literal and express provision of that act, no person can be elected who hath not within a year taken the sacrament in the Church of England. The defendant ²⁰ hath not taken the sacrament within a year ; he is not, therefore, elected. Here they fail.

If they ground it on the general design of the was his work to select from the mass of charges and counter-charges, with the evidence pro and con attaching to them, the ²⁵ essential ideas, and to show their significance clearly to his hearers.

By a brilliant analysis made before his speech, he reduced the case to a simple outline, and then in his speech devoted himself to making this outline clear and convincing. Relying on evidence he knew to be in the minds of his hearers, excluding every idea ³⁰ that did not make clearer his main or subordinate propositions, wasting not a word, he moved with neat transitions steadily to his goal.

Legislature in passing the Corporation Act ; the design was to exclude Dissenters from office, and disable them from serving. For, in those times, when a spirit of intolerance prevailed, and severe measures were
5 pursued, the Dissenters were reputed and treated as persons ill-affected and dangerous to the government. The defendant, therefore, a Dissenter, and in the eye of this law a person dangerous and ill-affected, is excluded from office, and disabled from serving. Here
10 they fail.

If they ground the action on their own by-law ; that by-law was professedly made to procure fit and able persons to serve the office, and the defendant is not fit and able, being expressly disabled by statute
15 law. Here, too, they fail.

If they ground it on his disability's being owing to a neglect of taking the sacrament at church, when he ought to have done it, the Toleration Act having freed the Dissenters from all obligation to take the
20 sacrament at church, the defendant is guilty of no neglect—no *criminal* neglect. Here, therefore, they fail.

These points, my Lords, will appear clear and plain

The Corporation Act, pleaded by the defendant
25 as rendering him ineligible to this office, and incapable of taking it upon him, was most certainly intended by the Legislature to *prohibit* the persons therein described being elected to any corporation offices, and to disable them from taking such offices upon them.
30 The act had two parts, first, it appointed a commission for turning out all that were at that time in office, who would not comply with what was required as

the condition of their continuance therein, and even gave a power to turn them out, though they should comply ; and then it farther enacted, that, from the termination of that commission, no person hereafter, who had not taken the sacrament according to the 5 rites of the Church of England within one year preceding the time of such election, should be placed, chosen, or elected into any office of, or belonging to, the government of any corporation ; and this was done, as it was expressly declared in the preamble to 10 the act, in order to perpetuate the succession in corporations in the hands of persons well-affected to government in church and state.

It was not their design (as hath been said) “to bring such persons into corporations by inducing 15 them to take the sacrament in the Church of England ” ; the Legislature did not mean to tempt persons who were ill-affected to the government occasionally to conform. It was not, I say, their design to bring them in. They could not trust them, lest 20 they should use the power of their offices to distress and annoy the state. And the reason is alleged in the act itself. It was because there were “evil spirits ” among them ; and they were afraid of evil spirits, and determined to keep them out. They 25 therefore put it out of the power of electors to choose such persons, and out of their power to serve ; and accordingly prescribed a mark or character, laid down a description whereby they should be known and distinguished by their conduct previous to such an elec- 30 tion. Instead of appointing a condition of their serving the office, resulting from their future conduct, or

some consequent action to be performed by them, they declared such persons incapable of being chosen as had not taken the sacrament in the Church within a year before such election ; and, without this mark of their affection to the Church, they could not be in office, and there could be no election. But as the law *then* stood, no man could have pleaded this disability, resulting from the Corporation Act, in bar of such an action as is now brought against the defendant, because this disability was owing to what was then, in the eye of the law, a crime ; every man being required by the canon law (received and confirmed by the statute law) to take the sacrament in the Church at least once a year. The law would not then permit a man to say that he had not taken the sacrament in the Church of England ; and he could not be allowed to plead it in bar of any action brought against him.

But the case is quite altered since the Act of Toleration. It is now no crime for a man, who is within the description of that act, to say he is a Dissenter ; nor is it any crime for him not to take the sacrament according to the rites of the Church of England ; nay, the crime is, if he does it contrary to the dictates of his conscience.

If it is a crime not to take the sacrament at church, it must be a crime by some *law* ; which must be either common or statute law, the canon law enforcing it being dependent wholly upon the statute law. Now the statute law is repealed as to persons capable of pleading [under the Toleration Act] that they are so and so qualified ; and therefore the canon law is repealed with regard to those persons.

If it is a crime by common law, it must be so either by usage or principle. But there is no usage or custom, independent of positive law, which makes non-conformity a crime. The eternal principles of natural religion are part of the common law. The essential principles of revealed religion are part of the common law ; so that any person reviling, subverting, or ridiculing them, may be prosecuted at common law. But it cannot be shown, from the principles of natural or revealed religion, that, independent of positive law, temporal punishments ought to be inflicted for mere opinions with respect to particular modes of worship. 5

Persecution for a sincere though erroneous conscience is not to be deduced from reason or the fitness of things. It can only stand upon positive law. 15

It has been said that “the Toleration Act only amounts to an exemption of the Protestant Dissenters from the *penalties* of certain laws therein particularly mentioned, and to nothing more ; that if it had been intended to bear, and to have any operation 20 upon the Corporation Act, the Corporation Act ought to have been mentioned therein ; and there ought to have been some enacting clause, exempting Dissenters from prosecution in consequence of this act, and enabling them to plead their not having received the 25 sacrament according to the rites of the Church of England in bar of such action.” But this is much too limited and narrow a conception of the Toleration Act, which amounts consequentially to a great deal more than this ; and it hath consequentially an inference and operation upon the Corporation Act in particular. The Toleration Act renders *that which* 30

was illegal before, now legal. The Dissenters' way of worship is permitted and allowed by this act. It is not only exempted from punishment, but rendered innocent and lawful. It is established ; it is put under the protection, and is not merely under the connivance of the law. In case those who are appointed by law to register dissenting places of worship refuse on any pretense to do it, we must, upon application, send a mandamus to compel them.

10 Now there cannot be a plainer position than that the law protects nothing in that very respect in which it is (in the eye of the law) at the same time a crime. Dissenters, within the description of the Toleration Act, are restored to a legal consideration and capacity ; and a hundred consequences will from thence follow, which are not mentioned in the act. For instance, previous to the Toleration Act, it was unlawful to devise any legacy for the support of dissenting congregations, or for the benefit of dissenting ministers ; for the law knew no such assemblies, and no such persons ; and such a devise was absolutely void, being left to what the law called superstitious purposes. But will it be said in any court in England that such a devise is not a good and valid one now ?

25 And yet there is nothing said of this in the Toleration Act. By this act the Dissenters are freed, not only from the pains and penalties of the laws therein particularly specified, but from all ecclesiastical censures and from all penalty and punishment whatsoever, on account of their nonconformity, which is allowed and protected by this act, and is, therefore, in the eye of the law, no longer a crime. Now, if the defendant

may say he is a Dissenter ; if the law doth not stop his mouth ; if he may declare that he hath not taken the sacrament according to the rites of the Church of England, without being considered as criminal ; if, I say, his mouth is not stopped by the law, he may then 5 plead his not having taken the sacrament according to the rites of the Church of England, in bar of this action. It is such a disability as doth not leave him liable to any action, or to any penalty whatsoever.

It is indeed said to be “a maxim in law, that a 10 man shall not be allowed to disable himself.” But, when this maxim is applied to the present case, it is laid down in too large a sense. When it is extended to comprehend a legal disability, it is taken in too great a latitude. What ! Shall not a man be allowed 15 to plead that he is not fit and able ? These words are inserted in the by-law, as the ground of making it ; and in the plaintiff’s declaration, as the ground of his action against the defendant. It is alleged that the defendant was fit and able, and that he refused to 20 serve, not having a reasonable excuse. It is certain, and it is hereby in effect admitted, that if he is not fit and able, and that if he hath a reasonable excuse, he may plead it in bar of this action. Surely he might plead that he was not worth fifteen thousand pounds, 25 provided that was really the case, as a circumstance that would render him not fit and able. And if the law allows him to say that he hath not taken the sacrament according to the rites of the Church of Eng- 30 land, being within the description of the Toleration Act, he may plead *that* likewise to show that he is not fit and able. It is a reasonable, it is a lawful excuse.

My Lords, the meaning of this maxim, “that a man shall not disable himself,” is solely this : that a man shall not disable himself by his own wilful crime ; and such a disability the law will not allow him to plead. If a man contracts to sell an estate to any person upon certain terms at such a time, and in the meantime he sells it to another, he shall not be allowed to say, “Sir, I cannot fulfill my contract ; it is out of my power ; I have sold my estate to another.” Such a plea would be no bar to an action, because the act of his selling it to another is the very breach of contract. So, likewise, a man who hath promised marriage to one lady, and afterward marries another, cannot plead in bar of a prosecution from the first lady that he is already married, because his marrying the second lady is the very breach of promise to the first. A man shall not be allowed to plead that he was drunk in bar of a criminal prosecution, though perhaps he was at the time as incapable of the exercise of reason as if he had been insane, because his drunkenness was itself a crime. He shall not be allowed to excuse one crime by another. The Roman soldier, who cut off his thumbs, was not suffered to plead his disability for the service to procure his dismissal with impunity, because his incapacity was designedly brought on him by his own wilful fault.³ And I am glad to observe so good an agree

³ This paragraph shows well the great value in argument of concrete illustration. By means of his illustrations Lord Mansfield not only adds life and interest to his speech, but also makes perfectly clear a distinction that, when first stated, seems a little subtle, and might, without the illustration, remain for most hearers a little vague.

ment among the judges upon this point, who have stated it with great precision and clearness.

When it was said, therefore, that “a man cannot plead his crime in excuse for not doing what he is by law required to do,” it only amounts to this, that he ⁵ cannot plead in excuse what, when pleaded, *is* no excuse; but there is not in this the shadow of an objection to his pleading what is an excuse—pleading a legal disqualification. If he is nominated to be a justice of the peace, he may say, “I cannot be a jus-¹⁰ tice of the peace, for I have not a hundred pounds a year.” In like manner, a Dissenter may plead, “I have not qualified, and I cannot qualify, and am not obliged to qualify; and you have no right to fine me for not serving.” ¹⁵

It hath been said that “the King hath a right to the service of all his subjects.” And this assertion is very true, provided it be properly qualified. But surely, against the operation of this general right in particular cases, a man may plead a natural or civil ²⁰ disability. May not a man plead that he was upon the high seas? May not idiocy or lunacy be pleaded, which are natural disabilities; or a judgment of a court of law, and much more a judgment of Parliament, which are civil disabilities? ²⁵

It hath been said to be a maxim “that no man can plead his being a lunatic to avoid a deed executed, or excuse an act done, at that time, because, it is said, “if he was a lunatic, he could not remember any action he did during the period of his insanity”; and this was ³⁰ doctrine formerly laid down by some judges. But I ~~am~~ glad to find that of late it hath been generally

exploded. For the reason assigned for it is, in my opinion, wholly insufficient to support it ; because, though he could not remember what passed during his insanity, yet he might justly say, if he ever executed such a deed, or did such an action, it *must* have been during his confinement or lunacy, for he did not do it either before or since that time.

As to the case in which a man's plea of insanity was actually set aside, it was nothing more than this : it was when they pleaded *ore tenus* [or verbally] ; the man pleaded that he was at the time out of his senses. It was replied, How do you know that you were out of your senses ? No man that is so, knows himself to be so. And accordingly his plea was, upon this quibble, set aside ; not because it was not a valid one, if he *was* out of his senses, but because they concluded he was not out of his senses. If he had alleged that he was at that time confined, being apprehended to be out of his senses, no advantage could have been taken of his manner of expressing himself, and his plea must have been allowed to be good.

As to Larwood's case, he was not allowed the benefit of the Toleration Act, because he did not plead it. If he had insisted on his right to the benefit of it in his plea, the judgment must have been different. His inserting it in his *replication* was not allowed, not because it was not an allegation that would have excused him if it had been originally taken notice of in his plea, but because its being not mentioned till afterward was a departure from his plea.

In the case of the Mayor of Guilford, the Toleration Act was pleaded. The plea was allowed good, the

disability being esteemed a lawful one ; and the judgment was right.

And here the defendant hath likewise insisted on his right to the benefit of the Toleration Act. In his plea he saith he is *bona fide* a Dissenter, within the description of the Toleration Act ; that he hath taken the oaths, and subscribed the declaration required by that act, to show that he is not a popish recusant ; that he hath never received the sacrament according to the rites of the Church of England, and that he ¹⁰ cannot in conscience do it ; and that for more than fifty years past he hath not been present at church at the celebration of the established worship, but hath constantly received the sacrament and attended divine service among the Protestant Dissenters. These facts ¹⁵ are not denied by the plaintiff, though they might easily have been traversed ; and it was incumbent upon them to have done it, if they had not known they should certainly fail in it. There can be no doubt, therefore, that the defendant is a Dissenter—²⁰ an honest, conscientious Dissenter ; and no conscientious Dissenter can take the sacrament at church. The defendant saith he cannot do it, and he is not obliged to do it. And as this is the case, as the law allows him to say this, as it hath not stopped his mouth, ²⁵ the plea which he makes is a lawful plea, his disability being through no crime or fault of his own. I say, he is disabled by act of Parliament, without the concurrence or intervention of any fault or crime of his own ; and, therefore, he may plead this disability in ³⁰ bar of the present action.

The case of “atheists and infidels” is out of

the present question ; they come not within the description of the Toleration Act. And this is the sole point to be inquired into in all cases of the like nature with that of the defendant, who here pleads the Toleration
5 Act. Is the man *bona fide* a Dissenter within the description of that act ? If not, he cannot plead his disability in consequence of his not having taken the sacrament in the Church of England. If he is, he may lawfully and with effect plead it in bar of such
10 an action ; and the question on which this distinction is grounded must be tried by a jury.

It hath been said that, "this being a matter between God and a man's own conscience, it cannot come under the cognizance of a jury." But certainly
15 it may ; and, though God alone is the absolute judge of a man's religious profession and of his conscience, yet there are some marks even of sincerity, among which there is none more certain than *consistency*. Surely a man's sincerity may be judged of by overt
20 acts. It is a just and excellent maxim, which will hold good in this, as in all other cases, "by their fruits ye shall know them." Do they, I do not say go to meeting now and then, but do they frequent the meeting-house ? Do they join generally and statedly
25 in divine worship with dissenting congregations ?

Whether they do or not, may be ascertained by their neighbors, and by those who frequent the same places of worship. In case a man hath occasionally conformed for the sake of places of trust and
30 profit ; in that case, I imagine, a jury would not hesitate in their verdict. If a man then alleges he is a Dissenter, and claims the protection and the

advantages of the Toleration Act, a jury may justly find that he is not a Dissenter within the description of the Toleration Act, so far as to render his disability a lawful one. If he takes the sacrament for his interest, the jury may fairly conclude that this scruple of conscience is a false pretense when set up to avoid a burden. 5

The defendant in the present case pleads that he is a Dissenter within the description of the Toleration Act ; that he hath not taken the sacrament in the 10 Church of England within one year preceding the time of his supposed election, nor ever in his whole life ; and that he cannot in conscience do it.

Conscience is not controllable by human laws, nor amenable to human tribunals. Persecution, or attempts 15 to force conscience, will never produce conviction, and are only calculated to make hypocrites or martyrs.

V. My Lords, there never was a single instance, from the Saxon times down to our own, in which a man was ever punished for erroneous opinions con- 20 cerning rites or modes of worship, but upon some positive law. The common law of England, which is only common reason or usage, knows of no prosecution for mere opinions. For atheism, blasphemy, and reviling the Christian religion, there have been 25 instances of persons prosecuted and punished upon the common law. But bare non-conformity is no sin by the common law ; and all positive laws inflicting any pains or penalties for non-conformity to the established rites and modes, are repealed by the Act 30 of Toleration, and Dissenters are thereby exempted from all ecclesiastical censures.

What bloodshed and confusion have been occasioned, from the reign of Henry the Fourth, when the first penal statutes were enacted, down to the revolution in this kingdom, by laws made to force 5 conscience!⁴ There is nothing, certainly, more unreasonable, more inconsistent with the rights of human nature, more contrary to the spirit and precepts of the Christian religion, more iniquitous and unjust, more impolitic, than persecution. It is against 10 natural religion, revealed religion, and sound policy.

⁴ Throughout the preceding part of the speech Lord Mansfield has appealed directly only to the common-sense and the intellect of his hearers. Indirectly, of course, his air of impartiality and sincerity has been a persuasive appeal. Here for the first time he 15 directly appeals, and subtly, to the feelings of his hearers. He shames them by suggesting that if they approve of the course of the plaintiff, they will out-Jesuit their loathed foes, the Jesuits. To say this directly might arouse anger, and so divert attention to Lord Mansfield from the idea he wishes to enforce. Therefore, 20 he states his analogy so deftly that the hearer chiefly applies the words, and most of the responsibility for the shame of the comparison falls on him.

In the next paragraph Lord Mansfield first phrases a suspicion that for some time his words have fostered in his hearers' minds. 25 If early in his speech he had denounced the persecutors of Evans as conspirators, he would have missed the impartial air of his speech. Instead, as twisting and turning the case, he shows a hearer that from every point of view the plaintiff is wrong and unjust, he develops more and more a feeling that some evil plan 30 must be back of injustice so evident. This unstated suspicion he strengthens when he makes the reader see the Jesuitical nature of the attempt; and finally, when the hearer himself is about to break out with his suspicion, phrases it for him, supporting his accusation by references to the evidence produced in the case, and by an analogy 35 Then, with a swift summary of the whole plea, he closes.

Sad experience and a large mind taught that great man, the President De Thou, this doctrine. Let any man read the many admirable things which, though a Papist, he hath dared to advance upon the subject, in the dedication of his History to Harry the Fourth 5 of France, which I never read without rapture, and he will be fully convinced, not only how cruel, but how im-politic it is to prosecute for religious opinions. I am sorry that of late his countrymen have begun to open their eyes, see their error, and adopt his sentiments. 10 I should not have broken my heart (I hope I may say it without breach of Christian charity) if France had continued to cherish the Jesuits and to persecute the Huguenots.

There was no occasion to revoke the Edict of 15 Nantes. The Jesuits needed only to have advised a plan similar to what is contended for in the present case, *Make a law to render them incapable of office, make another to punish them for not serving.* If they accept, punish them (for it is admitted on all hands 20 that the defendant, in the cause before your Lordships, is prosecutable for taking the office upon him)—if they accept, punish them ; if they refuse, punish them. If they say yes, punish them ; if they say no, punish them. My Lords, this is a most exquisite dilemma, 25 from which there is no escaping. It is a trap a man cannot get out of ; it is as bad persecution as that of Procrustes. If they are too short, stretch them ; if they are too long, lop them. Small would have been their consolation to have been gravely told, “ The 30 Edict of Nantes is kept inviolable. You have the full benefit of that act of toleration ; you may take the

sacrament in your own way with impunity ; you are not compelled to go to mass." Were this case but told in the city of London, as of a proceeding in France, how they would exclaim against the Jesuitical distinction ! And yet, in truth, it comes from themselves. The Jesuits never thought of it. When they meant to persecute by their act of toleration, the Edict of Nantes was repealed.

This by-law, by which the Dissenters are to be reduced to this wretched dilemma, is a by-law of the city, a local corporation, contrary to an act of Parliament, which is the law of the land ; a modern by-law of a very modern date, made long since the Corporation Act, long since the Toleration Act, in the face of them, for they knew these laws were in being. It was made in some year in the reign of the late King—I forget which ; but it was made about the time of *building the mansion house!* Now, if it could be supposed the city have a power of making such a by-law, it would entirely subvert the Toleration Act, the design of which was to exempt the Dissenters from all penalties ; for by such a by-law they have it in their power to make every Dissenter pay a fine of six hundred pounds, or any sum they please, for it amounts to that.

The professed design of making this by-law was to get fit and able persons to serve the office ; and the plaintiff sets forth in his declaration, that if the Dissenters are excluded, they shall want fit and able persons to serve the office. But, were I to deliver my own suspicion, it would be, that they did not so much wish for their services as their fines. Dissenters have

been appointed to this office, one who was blind, another who was bed-ridden ; not, I suppose, on account of their being fit and able to serve the office. No : they were disabled both by nature and by law.

We had a case lately in the courts below, of a person 5 chosen mayor of a corporation while he was beyond seas with his Majesty's troops in America, and they knew him to be so. Did they want him to serve the office ? No ; it was impossible. But they had a mind to continue the former mayor a year longer, and to 10 have a pretense for setting aside him who was now chosen, on all future occasions, as having been elected before.

In the case before your Lordships, the defendant was by law incapable at the time of his pretended 15 election ; and it is my firm persuasion that he was chosen because he was incapable. If he had been capable, he had not been chosen, for they did not want him to serve the office. They chose him because, without a breach of the law, and a usurpation on the 20 Crown, he could not serve the office. They chose him, that he might fall under the penalty of their by-law, made to serve a particular purpose ; in opposition to which, and to avoid the fine thereby imposed, he hath pleaded a legal disability, grounded on two 25 acts of Parliament. As I am of opinion that his plea is good, I conclude with moving your Lordships,

“ That the judgment be affirmed.”

Junius.

LETTER TO THE PRINTER OF THE "PUBLIC ADVERTISER."

January 21, 1769.

[“At the close of 1767 Lord Chatham’s cabinet had fallen to pieces, and the Duke of Grafton became minister. The Duke immediately endeavored to strengthen himself on every side. He yielded to the wishes of the King by making Lord North Chancellor of the Exchequer, and by raising Mr. Jenkinson, the organ of Lord Bute, to higher office and influence. Thus he gave a decided ascendency to the Tories. On the other hand, he endeavored to conciliate Lord Rockingham and the Duke of Bedford by very liberal proposals. But these gentlemen differing as to the lead of the House, the Bedford interest prevailed ; Lord Weymouth, a member of that family, was made Secretary of the Home Department ; while Lord Rockingham was sent back to the ranks of Opposition under a sense of wrong and insult. Six months, down almost to the middle of 1768, were spent in these negotiations and arrangements.

“These things wrought powerfully on the mind of Junius, who was a Grenville or Rockingham Whig. But in addition to this, he had strong private animosities. He not only saw with alarm and abhorrence the triumph of Tory principles, but he cherished the keenest personal resentment toward the King and most of his ministers. Those, especially, who had deserted their former Whig associates, he regarded as traitors to the cause of liberty. He therefore now determined to give full scope to his feelings, and to take up a system of attack far more galling to his opponents than had ever yet been adopted. One thing was favorable to such a design. Parliament was to expire within a few months ; and every blow now struck would give double alarm and distress to the government, while it served also to inflame the minds of the

people, and rouse them to a more determined resistance in the approaching elections. Accordingly, at the close of the Christmas holidays, when the business of the session really commences, he addressed his first letter to the printer of the *Public Advertiser*, under date of January 21, 1769." In this letter "Junius, for the first time, broke through the barriers thrown around the monarch by the maxim, 'the King can do no wrong.' He assailed him like any other man, though in more courtly and guarded language. He attacked the ministry in more direct terms," saying, "'It is not a casual concurrence of calamitous circumstances—it is the pernicious hand of government alone, that can make a whole people desperate.' The attention of the public was strongly arrested. The poet Gray, in his correspondence, speaks of the absorbing power of this letter over his mind, when he took it up casually for the first time at a country inn, where he had stopped for refreshment on a journey. He was unable to lay it down, or even to think of the food before him, until he had read it over and over again with the most painful interest. The same profound sensation was awakened in the higher political circles throughout the kingdom."—*Goodrich.*]

This letter, though not the first that appeared over the signature "Junius," is the first of the collection known as the "Junius Letters." These came out at intervals from 1769 to 1772, when "Junius" ceased to write. More than fifty persons have been suggested for the author of the "Junius Letters." Popularly, Sir Philip Francis (born 1740, died 1818,) has been supposed to be the author of them. His authorship, however, has not been conclusively proved.

SIR : The submission of a free people to the executive authority of government is no more than a compliance with laws which they themselves have enacted.¹

¹ Junius, writing for a public already much disturbed by the condition of the government, could do away with any elaborate introduction. To catch the reader's attention must be his aim, and this he accomplished by beginning with a sentence that at a time of political uneasiness and distrust must arrest a reader's

While the national honor is firmly maintained abroad, and while justice is impartially administered at home, the obedience of the subject will be voluntary, cheerful, and I might say, almost unlimited. A generous nation is grateful even for the preservation of its rights, and willingly extends the respect due to the office of a good prince into an affection for his person. Loyalty, in the heart and understanding of an Englishman, is a rational attachment to the guardian of the laws. Prejudices and passion have sometimes carried it to a criminal length ; and, whatever foreigners may imagine, we know that Englishmen have erred as much in a mistaken zeal for particular persons and families, as they ever did in defense of what they thought most dear and interesting to themselves.

eye. Sure that the public, which had eagerly been watching state affairs, would understand any references to men or events of the years just preceding 1761, Junius did not, throughout his speech, trouble to bring forward evidence of the truth of his references and allusions, but treats them as matters the details of which are of common report and belief. His method, throughout the letter, as the many notes of explanation an editor to-day finds necessary suggest, was to leave a good deal unsaid, letting the reader fill out his allusions, apply his words, with the aid of the details in his own mind. Nowhere is this better shown than in his reference to the Wilkes case and Lord Mansfield. Knowing that the details of this case were in every reader's mind, he avoided a statement of it that might involve him in controversy, merely hinting an application of it, which a reader promptly makes. This method makes a reader partly responsible for the daring conclusion to which Junius wished to lead him, makes him trust its truth more because he has not been forced to it, but has come to it himself.

It naturally fills us with resentment to see such a temper insulted and abused.² In reading the history of a free people, whose rights have been invaded, we are interested in their cause. Our own feelings tell us how long they ought to have submitted, and at what moment it would have been treachery to themselves not to have resisted. How much warmer will be our resentment, if experience should bring the fatal example home to ourselves !

The situation of this country is alarming enough to rouse the attention of every man who pretends to a concern for the public welfare. Appearances justify suspicion ; and when the safety of a nation is at stake, suspicion is a just ground of inquiry. Let us enter into it with candor and decency. Respect is due to the station of ministers ; and if a resolution must at

² “ We have here the starting point of the exordium, as it lay originally in the mind of Junius, viz., that the English nation was ‘insulted and abused’ by the King and ministers. But this was too strong a statement to be brought out abruptly. Junius therefore went back, and prepared the way by showing in successive sentences, (1) Why a free people obey the laws—‘because they have themselves enacted them.’ (2) That this obedience is ordinarily cheerful, and almost unlimited. (3) That such obedience to the guardian of the laws naturally leads to a strong affection for his person. (4) That this affection (as shown in their history) had often been excessive among the English, who were, in fact, peculiarly liable to a ‘mistaken zeal for particular persons and families.’ Hence they were equally liable (this is not said, but implied) to have their loyalty imposed upon ; and therefore the feeling then so prevalent was well founded, that the King, in his rash counsels and reckless choice of ministers, *must* have been taking advantage of the generous confidence of his people, and playing on the easiness of their temper. If so, they were *indeed*

last be taken, there is none so likely to be supported with firmness as that which has been adopted with moderation.

The ruin or prosperity of a state depends so much upon the administration of its government, that, to be acquainted with the merit of a ministry, we need only observe the condition of the people. If we see them obedient to the laws, prosperous in their industry, united at home, and respected abroad, we may reasonably presume that their affairs are conducted by men of experience, abilities, and virtue. If, on the contrary, we see a universal spirit of distrust and dissatisfaction, a rapid decay of trade, dissensions in all parts of the empire, and a total loss of respect in the eyes of foreign powers, we may pronounce, without

insulted and abused. The exordium, then, is a complete chain of logical deduction, and the case is fully made out, provided the popular feeling referred to was correct. And here we see where the fallacy of Junius lies, whenever he is in the wrong. It is in taking for granted one of the steps of his reasoning. He does not, in this case, even mention in direct terms the feeling alluded to. He knew it was beating in the hearts of the people; his whole preceding train of thought was calculated to justify and inflame it; and he therefore leaps at once to the conclusion it involves, and addresses them as actually filled with *resentment* 'to see such a temper insulted and abused.' The feeling, in this instance, was to a great extent well founded, and so far his logic is complete. In other cases his assumption is a false one. He lays hold of some slander of the day, some distorted statement of facts, some maxim which is only half true, some prevailing passion or prejudice, and dexterously intermingling them with a train of thought which in every other respect is logical and just, he hurries the mind to a conclusion which seems necessarily involved in the premises."—*Goodrich.*

hesitation, that the government of that country is weak, distracted, and corrupt. The multitude, in all countries, are patient to a certain point. Ill usage may rouse their indignation, and hurry them into excesses, *but the original fault is in government.* Perhaps 5 there never was an instance of a change in the circumstances and temper of a whole nation, so sudden and extraordinary as that which the misconduct of ministers has, within these very few years, produced in Great Britain. When our gracious sovereign ascended 10 the throne, we were a flourishing and a contented people. If the personal virtues of a king could have insured the happiness of his subjects, the scene could not have altered so entirely as it has done. The idea of uniting all parties, of trying all characters, and 15 distributing the offices of state by rotation, was gracious and benevolent to an extreme, though it has not yet produced the many salutary effects which were intended by it. To say nothing of the wisdom of such plan, it undoubtedly arose from an unbounded goodness 20 of heart, in which folly had no share. It was not a capricious partiality to new faces; it was not a natural turn for low intrigue, nor was it the treacherous amusement of double and triple negotiations. No, sir, it arose from a continued anxiety in the purest 25 of all possible hearts for the general welfare.³ Unfor-

³ "In this attack on the King, there is a refined artifice, rarely if ever equaled, in leading the mind gradually forward from the slightest possible insinuation to the bitterest irony. First we have the 'uniting of all parties,' which is proper and desirable; next, 3C 'trying all characters,' which suggests decidedly a want of judgment; then 'distributing the offices of state by rotation,' a

tunately for us, the event has not been answerable to the design. After a rapid succession of changes, we are reduced to that change which hardly any change can mend. Yet there is no extremity of distress which 5 of itself ought to reduce a great nation to despair. It is not the disorder, but the physician; it is not a casual concurrence of calamitous circumstances, it is the pernicious hand of government, which alone can make a whole people desperate.

10 charge rendered plausible, at least, by the frequent changes of ministers, and involving (if true) a weakness little short of absolute fatuity. The way being thus prepared, what was first insinuated is now openly expressed in the next sentence. The word ‘*folly*’ is applied to the conduct of the King of England in the face of his 15 subjects, and the application rendered doubly severe by the gravest irony. Still, there is one relief. Allusion is made to his ‘unbounded goodness of heart,’ from which, in the preceding chain of insinuations, these errors of judgment had been deduced. The next sentence takes this away. It directly ascribes to the King, 20 with an increased severity of ironical denial, some of the meanest passions of royalty, ‘a capricious partiality for new faces,’ a ‘natural love of low intrigue,’ ‘the treacherous amusement of double and triple negotiations’! It is unnecessary to remark on the admirable precision and force of the language in these expressions, and indeed, throughout the whole passage. There had 25 been just enough in the King’s conduct for the last seven years to make the people suspect all this, and to weaken or destroy their affection for the Crown. It was all connected with that system of favoritism introduced by Lord Bute, which the nation so much abhorred. Nothing but this would have made them endure for a moment such an attack on their monarch, and especially the absolute mockery with which Junius concludes the whole, by speaking of ‘the anxiety of the purest of all *possible* hearts for the general welfare.’ His entire letter to the King, with all the rancor 30 ascribed to it by Burke, does not contain so much bitterness and insult as are concentrated in this single passage.”—*Goodrich.*

Without much political sagacity, or any extraordinary depth of observation, we need only mark how the principal departments of the state are bestowed [distributed], and look no farther for the true cause of every mischief that befalls us.⁴

The finances of a nation, sinking under its debts and expenses, are committed to a young nobleman already ruined by play.⁵ Introduced to act under the auspices of Lord Chatham, and left at the head of affairs by that nobleman's retreat, he became a minister by accident; but, deserting the principles and professions which gave him a moment's popularity, we see him, from every honorable engagement to the public, an apostate by design. As for business, the world yet knows nothing of his talents or resolution, unless a wavering, wayward inconsistency be a mark of genius, and caprice a demonstration of spirit. It may be said, perhaps, that it is his Grace's province, as surely it is his passion, rather to distribute than to save the public money, and that while Lord

⁴ The two most marked qualities of this letter are its careful structure and its concreteness of statement. Junius deals with general statements only in the first five paragraphs, and then with some specific illustration. After a reader passes the fifth paragraph, he reads but concrete illustration after concrete illustration of the truth of the proposition to which Junius worked up carefully in his opening paragraphs, and is led rapidly through them to the daringly direct and bare arraignment by name of the ministers at fault—a climax of concreteness.

⁵ "The Duke of Grafton, First Lord of the Treasury. A reader should notice the skill that leaves unfinished the thought that a gambler loaded with debts is in charge of a treasury 'sinking under its debts and expenses.' The implied argument would be weakened by any attempt to expand it."—*Goodrich.*

North is Chancellor of the Exchequer, the First Lord of the Treasury may be as thoughtless and extravagant as he pleases. I hope, however, he will not rely too much on the fertility of Lord North's genius for finance. His Lordship is yet to give us the first proof of his abilities. It may be candid to suppose that he has hitherto voluntarily concealed his talents ; intending, perhaps, to astonish the world, when we least expect it, with a knowledge of trade, a choice of expedients, and a depth of resources equal to the necessities, and far beyond the hopes of his country. He must now exert the whole power of his capacity, if he would wish us to forget that, since he has been in office, no plan has been formed, no system adhered to, nor any one important measure adopted for the relief of public credit. If his plan for the service of the current year be not irrevocably fixed on, let me warn him to think seriously of consequences before he ventures to increase the public debt. Outraged and oppressed as we are, this nation will not bear, after a six years' peace, to see new millions borrowed, without any eventual diminution of debt or reduction of interest. The attempt might rouse a spirit of resentment, which might reach beyond the sacrifice of a minister. As to the debt upon the civil list, the people of England expect that it will not be paid without a strict inquiry how it was incurred.⁶ If it must be paid

“ Within about seven years, the King had run up a debt of £513,000 beyond the ample allowance made for his expenses on the civil list, and had just applied, at the opening of Parliament, for a grant to pay it off. The nation were indignant at such over-reaching. The debt, however, was paid this session, and in a few years there was another contracted.”—*Goodrich.*

by Parliament, let me advise the Chancellor of the Exchequer to think of some better expedient than a lottery. To support an expensive war, or in circumstances of absolute necessity, a lottery may perhaps be allowable ; but, besides that it is at all times the very worst way of raising money upon the people, I think it ill becomes the royal dignity to have the debts of a prince provided for, like the repairs of a country bridge or a decayed hospital. The management of the King's affairs in the House of Commons cannot 10 be more disgraced than it has been. A leading minister repeatedly called down for absolute ignorance—ridiculous motions ridiculously withdrawn—deliberate plans disconcerted, and a week's preparation of graceful oratory lost in a moment, give us 15 some, though not an adequate idea of Lord North's parliamentary abilities and influence. Yet, before he had the misfortune of being Chancellor of the Exchequer, he was neither an object of derision to his enemies, nor of melancholy pity to his friends. 20

A series of inconsistent measures had alienated the colonies from their duty as subjects and from their natural affection to their common country. When Mr. Grenville was placed at the head of the treasury, he felt the impossibility of Great Britain's supporting such an establishment as her former successes had made indispensable, and at the same time, of giving any sensible relief to foreign trade and to the weight of the public debt. He thought it equitable that those parts of the empire which had benefited 25 most by the expenses of the war, should contribute something to the expenses of the peace, and he had

no doubt of the constitutional right vested in Parliament, to raise the contribution. But, unfortunately for this country, Mr. Grenville was at any rate to be distressed because he was minister, and Mr. Pitt and 5 Lord Camden were to be patrons of America, because they were in opposition. Their declaration gave spirit and argument to the colonies ; and while, perhaps, they meant no more than the ruin of a minister, they in effect divided one-half of the empire from the to other.⁷

Under one administration the Stamp Act is made, under the second it is repealed, under the third, in spite of all experience, a new mode of taxing the colonies is invented, and a question revived which 15 ought to have been buried in oblivion. In these circumstances, a new office is established for the business of the Plantations, and the Earl of Hillsborough

⁷ "This attack on Lord Chatham and his friend shows the political affinities of Junius. He believed with Mr. Grenville 20 and Lord Rockingham in the *right* of Great Britain to tax America ; and in referring to Mr. Grenville's attempt to enforce that right by the Stamp Act, he adopts his usual course of interweaving an argument in its favor into the language used. He thus prepares the way for his censures on Lord Chatham and 25 Lord Camden, affirming that they acted on the principle that 'Mr. Grenville was at *any rate* to be distressed because he was minister and they were in opposition,' thus implying that they were actuated by factious and selfish views in their defense of America. About a year after this letter was written, Lord Rock- 30 ingham was reconciled to Lord Chatham and Lord Camden, and all united to break down the Grafton ministry. Junius, now turning round, wrote, in his fifty-fourth letter, his celebrated eulogium of Lord Chatham, and in his last letter, gave praise to Lord Camden."—*Goodrich.*

called forth, at a most critical season, to govern America. The choice at least announced to us a man of superior capacity and knowledge. Whether he be so or not, let his dispatches as far as they have appeared, let his measures as far as they have operated, determine for him. In the former we have seen strong assertions without proof, declamation without argument, and violent censures without dignity or moderation, but neither correctness in the composition nor judgment in the design. As for his ¹⁰ measures, let it be remembered that he was called upon to conciliate and unite, and that, when he entered into office, the most refractory of the colonies were still disposed to proceed by the constitutional methods of petition and remonstrance. Since that ¹⁵ period they have been driven into excesses little short of rebellion. Petitions have been hindered from reaching the Throne, and the continuance of one of the principal assemblies put upon an arbitrary condition, which, considering the temper they were in, it ²⁰ was impossible they should comply with, and which would have availed nothing as to the general question if it had been complied with.⁸ So violent, and I believe I may call it so unconstitutional an exertion of the prerogative, to say nothing of the weak, in- ²⁵ judicious terms in which it was conveyed, gives us as humble an opinion of his Lordship's capacity as it does of his temper and moderation. While we are at peace with other nations, our military force may per-

⁸ "The 'arbitrary condition' was that the General Court of ³⁰ Massachusetts should rescind one of their own resolutions and expunge it from their records."—*Goodrich.*

haps be spared to support the Earl of Hillsborough's measures in America. Whenever that force shall be necessarily withdrawn or diminished, the dismissal of such a minister will neither console us for his 5 imprudence, nor remove the settled resentment of a people, who, complaining of an act of the Legislature, are outraged by an unwarrantable stretch of prerogative, and supporting their claims by argument, are insulted with declamation.

10 Drawing lots would be a prudent and reasonable method of appointing the officers of state, compared to a late disposition of the secretary's office. Lord Rochford was acquainted with the affairs and temper of the Southern courts ; Lord Weymouth was equally 15 qualified for either department. By what unaccountable caprice has it happened that the latter, who pretends to no experience whatsoever, is removed to the most important of the two departments, and the former, by preference, placed in an office where his 20 experience can be of no use to him ?⁹ Lord Wey-

⁹ "The changes here censured had taken place about three months before. The office of Foreign Secretary for the Southern Department was made vacant by the resignation of Lord Shelburne. Lord Rochford, who had been minister to France, and 25 thus made 'acquainted with the temper of the Southern Courts,' ought naturally to have been appointed (if at all) to this department. Instead of this, he was made Secretary of the Northern Department, for which he had been prepared by no previous knowledge ; while Lord Weymouth was taken from the Home 30 Department, and placed in the Southern, being 'equally qualified' [that is, wholly unqualified by any 'experience whatsoever'] for either department in the Foreign office, whether Southern or Northern."—*Goodrich.*

mouth had distinguished himself in his first employment by a spirited, if not judicious conduct. He had animated the civil magistrate beyond the tone of civil authority, and had directed the operations of the army to more than military execution. Recovered from 5 the errors of his youth, from the distraction of play, and the bewitching smiles of Burgundy, behold him exerting the whole strength of his clear, unclouded faculties in the service of the Crown. It was not the heat of midnight excesses, nor ignorance of the laws, 10 nor the furious spirit of the house of Bedford ; no, sir ; when this respectable minister interposed his authority between the magistrate and the people, and signed the mandate on which, for aught he knew, the lives of thousands depended, he did it from the 15 deliberate motion of his heart, supported by the best of his judgment.¹⁰

¹⁰ " As Secretary of the Home Department, Lord Weymouth had addressed a letter to the magistrates of London, early in 1768, advising them to call in the military, provided certain disturbances in the streets should continue. The idea of setting the soldiery to fire on masses of unarmed men has always been abhorrent to the English nation. It was, therefore, a case admirably suited to the purposes of this letter. In using it to inflame the people against Lord Weymouth, Junius charitably 25 supposes that he was not repeating the errors of his youth—that he was neither drunk, nor ignorant of what he did, nor impelled by 'the furious spirit' of one of the proudest families of the realm—all of which Lord Weymouth would certainly say—and therefore (which his Lordship must also admit) that he did, from 30 'the deliberate motion of his heart, supported by the best of his judgment,' sign a paper which the great body of the people considered as authorizing promiscuous murder, and which actually resulted in the death of fourteen persons three weeks after. The

It has lately been a fashion to pay a compliment to the bravery and generosity of the Commander-in-chief [the Marquess of Granby] at the expense of his understanding. They who love him least make no question of his courage, while his friends dwell chiefly on the facility of his disposition. Admitting him to be as brave as a total absence of all feeling and reflection can make him, let us see what sort of merit he derives from the remainder of his character.

If it be generosity to accumulate in his own person and family a number of lucrative employments ; to provide, at the public expense, for every creature that bears the name of Manners, and neglecting the merit and services of the rest of the army, to heap promotions upon his favorites and dependents, the present Commander-in-chief is the most generous man alive. Nature has been sparing of her gifts to this noble Lord ; but where birth and fortune are united, we expect the noble pride and independence of a man of spirit, not the servile, humiliating complaisance of a courtier. As to the goodness of his heart, if a proof of it be taken from the facility of never refusing, what conclusion shall we draw from the indecency of never performing ? And if the discipline of the army

whole is so wrought up as to create the feeling that Lord Weymouth was in *both* of these states of mind—that he acted with *deliberation* in carrying out the dictates of headlong or drunken passion.

" All this, of course, is greatly exaggerated. Severe measures did seem indispensable to suppress the mobs of that day, and whoever stood forth to direct them, must of necessity incur the popular indignation. Still, it was a question among the most candid men, whether milder means might not have been effectual."—*Goodrich.*

be in any degree preserved, what thanks are due to a man, whose cares, notoriously confined to filling up vacancies, have degraded the office of Commander-in-chief into [that of] a broker of commissions.¹¹

With respect to the navy, I shall only say that this country is so highly indebted to Sir Edward Hawke that no expense should be spared to secure him an honorable and affluent retreat.

The pure and impartial administration of justice is perhaps the firmest bond to secure a cheerful submission of the people, and to engage their affections to government. It is not sufficient that questions of private right or wrong are justly decided, nor that judges are superior to the vileness of pecuniary corruption. Jefferies himself, when the court had no interest, was an upright judge. A court of justice may be subject to another sort of bias, more important and pernicious, as it reaches beyond the interest of individuals, and affects the whole community. A judge under the influence of government may be

¹¹ "The Marquess of Granby, personally considered, was perhaps the most popular member of the cabinet, with the exception of Sir Edward Hawke. He was a warm-hearted man, of highly social qualities and generous feelings. As it was the object of Junius to break down the ministry, it was peculiarly necessary for him to blast and destroy his popularity. This he attempts to do by discrediting the character of the Marquess as a man of firmness, strength of mind, and disinterestedness in managing the concerns of the army. This attack is distinguished for its plausibility and bitterness. His charges and insinuations are greatly overstrained; but it is certain that the army was mouldering away at this time in a manner which left the country in a very defenseless condition."—*Goodrich*.

honest enough in the decision of private causes, yet a traitor to the public. When a victim is marked out by the ministry, this judge will offer himself to perform the sacrifice. He will not scruple to prostitute his dignity, and betray the sanctity of his office, whenever an arbitrary point is to be carried for government, or the resentment of a Court to be gratified.

These principles and proceedings, odious and contemptible as they are, in effect are no less injudicious. A wise and generous people are roused by every appearance of oppressive, unconstitutional measures, whether those measures are supported openly by the power of government, or masked under the forms of a court of justice. Prudence and self-preservation will oblige the most moderate dispositions to make common cause, even with a man¹² whose conduct they

¹² John Wilkes, a member of the House of Commons, is referred to here. A violent opponent of Lord Bute, he had established a paper, *The North Briton*, in order to make his antagonism more effective. His attacks on Bute in this paper were exceedingly bitter. At about the time of Lord Bute's resignation, the issue of the journal was suspended, but when the royal speech framed by Grenville's ministry showed that only men, not measures, had changed, a supplementary number, "45," was published. This contained a caustic criticism of the King's message and of his Parliament. Lord Halifax, the leading Secretary of State, issued a "general warrant to search for authors, printers, and publishers," and to bring them before him for examination. Wilkes was arrested, and thrown into prison. A week after his imprisonment, he was released by order of the Court of Common Pleas, on the ground of his exemption from arrest as a member of Parliament. Public feeling was greatly stirred by the action of the Secretary of State, and the general warrants were afterward declared illegal. (See Ency. Brit.)

censure, if they see him persecuted in a way which the real spirit of the laws will not justify. The facts on which these remarks are founded are too notorious to require an application.¹³

This, sir, is the detail. In one view, behold a nation overwhelmed with debt ; her revenues wasted ; her trade declining ; the affections of her colonies alienated ; the duty of the magistrate transferred to the soldiery ; a gallant army, which never fought unwillingly but against their fellow-subjects, moulder¹⁰ing away for want of the direction of a man of common abilities and spirit ; and, in the last instance, the administration of justice become odious and suspected to the whole body of the people. This deplorable scene admits but of one addition—that we are gov-¹⁵erned by councils, from which a reasonable man can expect no remedy but poison, no relief but death.

If, by the immediate interposition of Providence, it were [be] possible for us to escape a crisis so full of terror and despair, posterity will not believe the history²⁰ of the present times. They will either conclude that

¹³ "Lord Mansfield is the judge pointed at in this paragraph. No one now believes that this great jurist ever did the things here ascribed to him by Junius. All that is true is, that he was a very high Tory, and was, therefore, naturally led to exalt the prerogatives of the Crown ; and that he was a very politic man (and this was the great failing in his character), and therefore unwilling to oppose the King or his ministers, when he knew in heart they were wrong. This was undoubtedly the case in respect to the issuing of the general warrant for apprehending Wilkes, which he ought publicly to have condemned ; but, as he remained silent, men naturally considered him, in his character of Chief Justice, as having approved of the course directed by the King." —*Goodrich.*

our distresses were imaginary, or that we had the good fortune to be governed by men of acknowledged integrity and wisdom. They will not believe it possible that their ancestors could have survived, or recovered from so desperate a condition, while a Duke of Grafton was Prime Minister, a Lord North Chancellor of the Exchequer, a Weymouth and a Hillsborough Secretaries of State, a Granby Commander-in-chief, and a Mansfield chief criminal judge of the ~~to~~ kingdom.

JUNIUS.

T. H. Huxley.

Born 1825.

LECTURE I OF THREE LECTURES ON EVOLUTION.¹

Delivered in New York, 1876.

[When, in 1876, Professor Huxley gave, in New York, his three lectures on "Evolution," his task was by no means so simple as it seems to-day, for at that time the acceptance of, or toleration for the doctrine of Evolution was far less general than it is in 1893. Since 1860, when Professor Huxley gave a course of lectures to workingmen on "The Relations of Man to the Lower Animals," he had been a central figure in the heated controversy in learned societies and in the magazines in regard to Evolution. He knew that in his audience must be some ignorance of what Evolution really means; probably considerable prejudice against the theory and himself; that his success or failure to make his exposition clear and convincing meant to give new impetus to the spread of the doctrine or to check it.]

WE live in and form part of a system of things of immense diversity and complexity, which we call Nature; and it is a matter of the deepest interest to all of us that we should form just conceptions of the constitution of that system and of its past history.² 5

¹ Reprinted by permission of Messrs. D. Appleton & Co., from "American Addresses," 1877.

² College students of science who wish to write on their favorite subjects seem often to think it beneath them to express themselves in terms that a reader not trained in their departments of knowledge can understand. To show such writers that masters of science, in addressing a mixed audience, not only do not dis-

With relation to this universe, man is, in extent, little more than a mathematical point ; in duration but a fleeting shadow ; he is a mere reed shaken in the winds of force. But, as Pascal long ago remarked, although a mere reed, he is a thinking reed ; and in virtue of that wonderful capacity of thought, he has the power of framing for himself a symbolic conception of the universe, which, although doubtless highly imperfect and inadequate as a picture of the great whole, is yet sufficient to serve him as a chart for the guidance of his practical affairs. It has taken long ages of toilsome and often fruitless labor to enable man to look steadily at the shifting scenes of the phantasmagoria of Nature, to notice what is fixed among her fluctuations, and what is regular among her apparent irregularities ; and it is only comparatively lately, within the last few centuries, that the conception of a universal order and of a definite course of things, which we term the course of Nature, has emerged.

But, once originated, the conception of the constancy of the order of Nature has become the dominant idea of modern thought. To any person who is familiar with the facts upon which that conception is based,

25 dain, but even study to attain simplicity of speech, is one reason for reprinting this lecture of Professor Huxley. Addressing an audience that he felt was not scientific, he spoke throughout with great simplicity, using scarcely any technical terms. Knowing that his audience as a whole had but the popular impressions of Evolution, half false, half true, he aimed first of all at clearness, and carefully defined every term that might be vague for some hearers. The three most noteworthy characteristics of this address are its simplicity of phrasing, its clearness, and its persuasive skill.

and is competent to estimate their significance, it has ceased to be conceivable that chance should have any place in the universe, or that events should depend upon any but the natural sequence of cause and effect. We have come to look upon the present as the child ⁵ of the past and as the parent of the future ; and, as we have excluded chance from a place in the universe, so we ignore, even as a possibility, the notion of any interference with the order of Nature. Whatever may be men's speculative doctrines, it is quite certain ¹⁰ that every intelligent person guides his life and risks his fortune upon the belief that the order of Nature is constant, and that the chain of natural causation is never broken.

In fact, no belief which we entertain has so com- ¹⁵ plete a logical basis as that to which I have just referred. It tacitly underlies every process of reasoning ; it is the foundation of every act of the will. It is based upon the broadest induction, and it is verified by the most constant, regular, and universal of deduc- ²⁰ tive processes. But we must recollect that any human belief, however broad its basis, however defensible it may seem, is, after all, only a probable belief, and that our widest and safest generalizations are simply statements of the highest degree of proba- ²⁵ bility. Though we are quite clear about the constancy of the order of Nature, at the present time, and in the present state of things, it by no means necessarily follows that we are justified in expanding this generalization into the infinite past, and in deny- ³⁰ ing, absolutely, that there may have been a time when Nature did not follow a fixed order, when the

relations of cause and effect were not definite, and when extra-natural agencies interfered with the general course of Nature. Cautious men will allow that a universe so different from that which we know 5 may have existed ; just as a very candid thinker may admit that a world in which two and two do not make four, and in which two straight lines do inclose a space, may exist. But the same caution which forces the admission of such possibilities demands a 10 great deal of evidence before it recognizes them to be anything more substantial. And when it is asserted that, so many thousand years ago, events occurred in a manner utterly foreign to and inconsistent with the existing laws of Nature, men, who, without being particularly cautious, are simply honest 15 thinkers, unwilling to deceive themselves or delude others, ask for trustworthy evidence of the fact.

Did things so happen or did they not ? This is a historical question, and one the answer to which must 20 be sought in the same way as the solution of any other historical problem.³

³ Professor Huxley, knowing that some of his audience, as strong churchmen, were probably antagonistic to him in mood, made his introduction not only so clear that all must understand 25 him, but so fair that all must grant what he said. Speaking from the point of view of the unprejudiced man of common sense,—what each of his hearers wished to be,—and suggesting steadily that with this man he cordially sympathized, he stated the problem of creation as simply as his hearers must often have stated it to themselves. Then he and his hearers were ready for a statement of the three hypotheses. Thus far he had, by his simplicity made his hearers understand him ; by his fairness trust him ; and by his skill meet him on common ground.

So far as I know, there are only three hypotheses which ever have been entertained, or which well can be entertained, respecting the past history of Nature. I will, in the first place, state the hypotheses, and then I will consider what evidence bearing upon them 5 is in our possession, and by what light of criticism that evidence is to be interpreted.

Upon the first hypothesis, the assumption is, that phenomena of Nature similar to those exhibited by the present world have always existed; in other 10 words, that the universe has existed from all eternity in what may be broadly termed its present condition.

The second hypothesis is, that the present state of things has had only a limited duration; and that, at some period in the past, a condition of the world, 15 essentially similar to that which we now know, came into existence, without any precedent condition from which it could have naturally proceeded. The assumption that successive states of Nature have arisen, each without any relation of natural causation to an ante- 20 cedent state, is a mere modification of this second hypothesis.

The third hypothesis also assumes that the present state of things has had but a limited duration; but it supposes that this state has been evolved by a natural 25 process from an antecedent state, and that from another, and so on; and, on this hypothesis, the attempt to assign any limit to the series of past changes is, usually, given up.

It is so needful to form clear and distinct notions 30 of what is really meant by each of these hypotheses that I will ask you to imagine what, according to each,

would have been visible to a spectator of the events which constitute the history of the earth. On the first hypothesis, however far back in time that spectator might be placed, he would see a world essentially, 5 though perhaps not in all its details, similar to that which now exists. The animals which existed would be the ancestors of those which now live, and similar to them ; the plants, in like manner, would be such as we know ; and the mountains, plains, and waters 10 would foreshadow the salient features of our present land and water. This view was held more or less distinctly, sometimes combined with the notion of recurrent cycles of change, in ancient times ; and its influence has been felt down to the present day. It 15 is worthy of remark that it is a hypothesis which is not inconsistent with the doctrine of Uniformitarianism, with which geologists are familiar. That doctrine was held by Hutton, and in his earlier days by Lyell. Hutton was struck by the demonstration of astrono- 20 mers that the perturbations of the planetary bodies, however great they may be, yet sooner or later right themselves ; and that the solar system possesses a self-adjusting power by which these aberrations are all brought back to a mean condition. Hutton 25 imagined that the like might be true of terrestrial changes ; although no one recognized more clearly than he the fact that the dry land is being constantly washed down by rain and rivers and deposited in the sea ; and that thus, in a longer or shorter time, the 30 inequalities of the earth's surface must be levelled, and its high lands brought down to the ocean. But, taking into account the internal forces of the earth,

which, upheaving the sea-bottom, give rise to new land, he thought that these operations of degradation and elevation might compensate each other; and that thus, for any assignable time, the general features of our planet might remain what they are. And inasmuch as, under these circumstances, there need be no limit to the propagation of animals and plants, it is clear that the consistent working-out of the uniformitarian idea might lead to the conception of the eternity of the world. Not that I mean to say that either ⁵ Hutton or Lyell held this conception—assuredly not; they would have been the first to repudiate it. Nevertheless, the logical development of their arguments tends directly toward this hypothesis.

The second hypothesis supposes that the present ¹⁵ order of things, at some no very remote time, had a sudden origin, and that the world, such as it now is, had chaos for its phenomenal antecedent. That is the doctrine which you will find stated most fully and clearly in the immortal poem of John Milton—the ²⁰ English *Divina Commedia*—*Paradise Lost*. I believe it is largely to the influence of that remarkable work, combined with the daily teachings to which we have all listened in our childhood, that this hypothesis owes its general wide diffusion as one of the current beliefs ²⁵ of English-speaking people. If you turn to the seventh book of *Paradise Lost*, you will find there stated the hypothesis to which I refer, which is briefly this: That this visible universe of ours came into existence at no great distance of time from the pres- ³⁰ ent; and that the parts of which it is composed made their appearance, in a certain definite order, in

the space of six natural days, in such a manner that, on the first of these days, light appeared ; that, on the second, the firmament, or sky, separated the waters above, from the waters beneath the firmament ; 5 that, on the third day, the waters drew away from the dry land, and upon it a varied vegetable life, similar to that which now exists, made its appearance ; that the fourth day was signalized by the apparition of the sun, the stars, the moon, and the planets ; that, on the 10 fifth day, aquatic animals originated within the waters ; that, on the sixth day, the earth gave rise to our four-footed terrestrial creatures, and to all varieties of terrestrial animals except birds, which had appeared on the preceding day ; and, finally, that man appeared 15 upon the earth, and the emergence of the universe from chaos was finished. Milton tells us, without the least ambiguity, what a spectator of these marvellous occurrences would have witnessed. I doubt not that his poem is familiar to all of you, but I should like to 20 recall one passage to your minds, in order that I may be justified in what I have said regarding the perfectly concrete, definite picture of the origin of the animal world which Milton draws. He says :

25 The sixth, and of creation last, arose
With evening harps and matin, when God said,
“ Let the earth bring forth soul living in her kind,
Cattle and creeping things, and beast of the earth,
Each in their kind ! ” The earth obeyed, and, straight
Opening her fertile womb, teemed at a birth
30 Innumerable living creatures, perfect forms,
Limbed and full-grown. Out of the ground uprose,
As from his lair, the wild beast, where he wons
In forest wild, in thicket, brake, or den ;

Among the trees in pairs they rose, they walked ;
 The cattle in the fields and meadows green :
 Those rare and solitary ; these in flocks
 Pasturing at once, and in broad herds upsprung.
 The grassy clods now calved ; now half appears 5
 The tawny lion, pawing to get free
 His hinder parts—then springs, as broke from bonds,
 And rampant shakes his brinded mane ; the ounce,
 The libbard, and the tiger, as the mole
 Rising, the crumbled earth above them threw 10
 In hillocks ; the swift stag from underground
 Bore up his branching head ; scarce from his mould
 Behemoth, biggest born of earth, upheaved
 His vastness ; fleeced the flocks and bleating rose
 As plants ; ambiguous between sea and land, 15
 The river-horse and scaly crocodile.
 At once came forth whatever creeps the ground,
 Insect or worm.

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There is no doubt as to the meaning of this statement, nor as to what a man of Milton's genius expected 20 would have been actually visible to an eye-witness of this mode of organization of living things.

The third hypothesis, or the hypothesis of evolution, supposes that, at any comparatively late period of past time, our imaginary spectator would meet with a state 25 of things very similar to that which now obtains ; but that the likeness of the past to the present would gradually become less and less, in proportion to the remoteness of his period of observation from the present day ; that the existing distribution of moun- 30 tains and plains, of rivers and seas, would show itself to be product of a slow process of natural change operating upon more and more widely different antecedent conditions of the mineral framework of the

earth ; until, at length, in place of that framework, he would behold only a vast nebulous mass, representing the constituents of the sun and of the planetary bodies. Preceding the forms of life which now exist
5 our observer would see animals and plants not identical with them, but like them ; increasing their differences with their antiquity and, at the same time, becoming simpler and simpler ; until, finally, the world of life would present nothing but that undifferentiated protoplasmic matter which, so far as our present knowledge goes, is the common foundation
10 of all vital activity.

The hypothesis of evolution supposes that in all this vast progression there would be no breach of
15 continuity, no point at which we could say "This is a natural process," and "This is not a natural process", but that the whole might be compared to that wonderful process of development which may be seen going on every day under our eyes, in virtue of which there
20 arises, out of the semi-fluid, comparatively homogeneous substance which we call an egg, the complicated organization of one of the higher animals. That, in a few words, is what is meant by the hypothesis of evolution.⁴

25 ⁴ Professor Huxley, stating the three hypotheses at first as simply as he could, felt even then that they sounded vague, and therefore brought in concrete illustration to make each clearer. When he spoke, far more than to-day, discussion of the theory of Evolution made church-people combative at once, because of the
30 essential contradiction they premised between it and the biblical theory of creation. Knowing this, Professor Huxley carefully avoided reference to the second hypothesis as biblical, lest, before he had placed all the hypotheses clearly before his hearers, he

I have already suggested that in dealing with these three hypotheses, in endeavoring to form a judgment as to which of them is the more worthy of belief, or whether none is worthy of belief—in which case our condition of mind should be that suspension of judgment which is so difficult to all but trained intellects—we should be indifferent to all *a priori* considerations. The question is a question of historical fact. The universe has come into existence somehow or other, and the problem is, whether it came into existence in one fashion, or whether it came into existence in another; and, as an essential preliminary to further discussion, permit me to say two or three words as to the nature and the kinds of historical evidence.

The evidence as to the occurrence of any event in past time may be ranged under two heads which, for convenience' sake, I will speak of as testimonial evidence and circumstantial evidence. By testimonial evidence I mean human testimony; and by circumstantial evidence I mean evidence which is not human testimony. Let me illustrate by a familiar example

should be involved in explanations of his interpretation of the lines in Genesis. To avoid this danger, he called the second hypothesis the Miltonic, by the newness of this term arousing the curiosity of the audience and turning their thoughts from the Bible to Paradise Lost. There could be no doubt that he interpreted correctly the lines he read: there might, as he shows later, have been much discussion about any interpretation he gave of the words in Genesis. Moreover, all fair-minded hearers must have recognized that the Miltonic statement is the legitimate working-out of the theory taught them as children. By his skill Professor Huxley got the three hypotheses before his audience without treating a difficult and dangerous topic.

what I understand by these two kinds of evidence, and what is to be said respecting their value.

Suppose that a man tells you that he saw a person strike another and kill him ; that is testimonial evidence of the fact of murder. But it is possible to have circumstantial evidence of the fact of murder ; that is to say, you may find a man dying with a wound upon his head having exactly the form and character of the wound which is made by an axe, and, 5 with due care in taking surrounding circumstances into account, you may conclude with the utmost certainty that the man has been murdered ; that his death is the consequence of a blow inflicted by another man with that implement. We are very much 10 in the habit of considering circumstantial evidence as of less value than testimonial evidence, and it may be that, where the circumstances are not perfectly clear and intelligible, it is a dangerous and unsafe kind of evidence ; but it must not be forgotten that, 15 in many cases, circumstantial is quite as conclusive as testimonial evidence, and that, not unfrequently, it is a great deal weightier than testimonial evidence. For example, take the case to which I referred just now. The circumstantial evidence may be better and 20 more convincing than the testimonial evidence ; for it may be impossible, under the conditions that I have defined, to suppose that the man met his death from any cause but the violent blow of an axe wielded by another man. The circumstantial evidence in favor 25 of a murder having been committed, in that case, is as complete and as convincing as evidence can be. It is evidence which is open to no doubt and to no

falsification. But the testimony of a witness is open to multitudinous doubts. He may have been mistaken. He may have been actuated by malice. It has constantly happened that even an accurate man has declared that a thing has happened in this, that, 5 or the other way, when a careful analysis of the circumstantial evidence has shown that it did not happen in that way, but in some other way.⁵

We may now consider the evidence in favor of or against the three hypotheses. Let me first direct your 10 attention to what is to be said about the hypothesis of the eternity of the state of things in which we now live. What will first strike you is, that it is a hypothesis which, whether true or false, is not capable of verification by any evidence. For, in order to obtain 15 either circumstantial or testimonial evidence sufficient to prove the eternity of duration of the present state of nature, you must have an eternity of witnesses or an infinity of circumstances, and neither of these is attainable. It is utterly impossible that such evidence 20 should be carried beyond a certain point of time; and all that could be said, at most, would be, that so far as the evidence could be traced, there was nothing to contradict the hypothesis. But when you look, not to the testimonial evidence—which, considering 25

⁵ This careful distinction between, and illustration of, testimonial and circumstantial evidence shows how careful Professor Huxley was not to leave in his hearers' minds any vagueness as to his terms. There is a popular feeling that circumstantial evidence is not very trustworthy, and since all of the proof Professor Huxley 30 intended to use in support of his theory was circumstantial evidence, it was necessary to do away with this prejudice in the minds of his hearers.

the relative insignificance of the antiquity of human records, might not be good for much in this case—but to the circumstantial evidence, then you find that this hypothesis is absolutely incompatible with such evidence as we have; which is of so plain and so simple a character that it is impossible in any way to escape from the conclusions which it forces upon us.

You are, doubtless, all aware that the outer substance of the earth, which alone is accessible to direct observation, is not of a homogeneous character, but that it is made up of a number of layers or strata.⁶

On careful examination, it is found that the materials of which each of these layers of more or less hard rock are composed, are, for the most part, of the same nature as those which are at present being formed under known conditions on the surface of the

⁶ In Geology the strata bear the following names. (The Post-Tertiary is the most recent. Read the main divisions from left to right, the sub-divisions downward, within each bracket).

Tertiary and Quaternary or Cainzoic.	<table border="0"> <tr> <td style="padding-right: 20px;">Post-Tertiary.</td><td style="border-left: 1px solid black; padding-left: 10px;">Secondary</td><td style="border-left: 1px solid black; padding-left: 10px;">Cretaceous.</td></tr> <tr> <td style="padding-right: 20px;">Pliocene.</td><td style="border-left: 1px solid black; padding-left: 10px;">or</td><td style="border-left: 1px solid black; padding-left: 10px;">Jurassic or Oölitic.</td></tr> <tr> <td style="padding-right: 20px;">Miocene.</td><td style="border-left: 1px solid black; padding-left: 10px;">Mesozoic.</td><td style="border-left: 1px solid black; padding-left: 10px;">Triassic.</td></tr> <tr> <td>Eocene.</td><td></td><td></td></tr> </table>	Post-Tertiary.	Secondary	Cretaceous.	Pliocene.	or	Jurassic or Oölitic.	Miocene.	Mesozoic.	Triassic.	Eocene.				
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25 Primary or Palæozoic.	<table border="0"> <tr> <td style="padding-right: 20px;">Permian.</td><td></td></tr> <tr> <td style="padding-right: 20px;">Carboniferous.</td><td></td></tr> <tr> <td style="padding-right: 20px;">Devonian.</td><td></td></tr> <tr> <td style="padding-right: 20px;">Silurian.</td><td></td></tr> <tr> <td style="padding-right: 20px;">Cambrian.</td><td></td></tr> <tr> <td style="padding-right: 20px;">Huronian.</td><td></td></tr> <tr> <td style="padding-right: 20px;">Laurentian.</td><td></td></tr> </table>	Permian.		Carboniferous.		Devonian.		Silurian.		Cambrian.		Huronian.		Laurentian.	
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earth. For example, the chalk, which constitutes a great part of the Cretaceous formation in some parts of the world, is practically identical in its physical and chemical characters with a substance which is now being formed at the bottom of the Atlantic 5 Ocean, and covers an enormous area ; other beds of rock are comparable with the sands which are being formed upon sea-shores, packed together, and so on. Thus, omitting rocks of igneous origin, it is demonstrable that all these beds of stone, of which a total 10 of not less than seventy thousand feet is known, have been formed by natural agencies, either out of the waste and washing of the dry land, or else by the accumulation of the exuviae of plants and animals. Many of these strata are full of such exuviae— 15 the so-called “fossils.” Remains of thousands of species of animals and plants, as perfectly recognizable as those of existing forms of life which you meet with in museums, or as the shells which you pick up upon the sea-beach, have been imbedded in the 20 ancient sands, or muds, or limestones, just as they are being imbedded now, in sandy, or clayey, or calcareous subaqueous deposits. They furnish us with a record, the general nature of which cannot be misinterpreted, of the kinds of things that have lived upon 25 . the surface of the earth during the time that is registered by this great thickness of stratified rocks. But even a superficial study of these fossils shows us that the animals and plants which live at the present time have had only a temporary duration ; for the remains 30 of such modern forms of life are met with, for the most part, only in the uppermost or latest tertiaries,

and their number rapidly diminishes in the lower deposits of that epoch. In the older tertiaries, the places of existing animals and plants are taken by other forms, as numerous and diversified as those which live now in the same localities, but more or less different from them; in the mesozoic rocks, these are replaced by others yet more divergent from modern types; and in the palæozoic formations the contrast is still more marked. Thus the circumstantial evidence absolutely negatives the conception of the eternity of the present condition of things. We can say with certainty that the present condition of things has existed for a comparatively short period; and that, so far as animal and vegetable nature are concerned, it has been preceded by a different condition. We can pursue this evidence until we reach the lowest of the stratified rocks, in which we lose the indications of life altogether. The hypothesis of the eternity of the present state of Nature may therefore be put out of court.

We now come to what I will term Milton's hypothesis—the hypothesis that the present condition of things has endured for a comparatively short time; and, at the commencement of that time, came into existence within the course of six days. I doubt not that it may have excited some surprise in your minds that I should have spoken of this as Milton's hypothesis, rather than that I should have chosen the terms which are more customary, such as "the doctrine of creation," or "the Biblical doctrine," or "the doctrine of Moses," all of which denominations, as applied to the hypothesis to which I have just referred, are

certainly much more familiar to you than the title of the Miltonic hypothesis.⁷ But I have had what I cannot but think are very weighty reasons for taking the course which I have pursued. In the first place, I have discarded the title of the "doctrine of creation,"⁵ because my present business is not with the question why the objects which constitute Nature came into existence, but when they came into existence, and in what order. This is as strictly a historical question as the question when the Angles and the Jutes invaded England, and whether they preceded or followed the Romans. But the question about creation is a philosophical problem, and one which cannot be solved, or even approached, by the historical method. What we want to learn is, whether the facts, so far as¹⁵ they are known, afford evidence that things arose in the way described by Milton, or whether they do not; and, when that question is settled, it will be time enough to inquire into the causes of their origination.

In the second place, I have not spoken of this doc-²⁰

⁷ Here Professor Huxley was obliged to meet squarely the difficulty he avoided on p. 69. Now that the second hypothesis was to be considered, any clear-sighted hearer must see that the testimony to be treated was of two kinds—testimonial, from the Bible, and circumstantial, from Geology. Therefore, it seemed that²⁵ the speaker must consider the "biblical" evidence here. This Professor Huxley did frankly, though very deftly, for while explaining why he did not speak of the second hypothesis as the "biblical," he made the supporters of the second hypothesis responsible for so much doubt as to the authenticity and the interpretation of³⁰ the testimonial evidence that it must be ruled out. Moreover, he gained, persuasively, by making these men, by his fine irony, a little ridiculous. If he made the audience smile at them, he had already done something to win his hearers to his view.

trine as the Biblical doctrine. It is quite true that persons as diverse in their general views as Milton the Protestant and the celebrated Jesuit Father Suarez, each put upon the first chapter of Genesis the interpretation embodied in Milton's poem. It is quite true that this interpretation is that which has been instilled into every one of us in our childhood ; but I do not for one moment venture to say that it can properly be called the Biblical doctrine. It is not my business, 10 and does not lie within my competency, to say what the Hebrew text does, and what it does not signify ; moreover, were I to affirm that this is the Biblical doctrine, I should be met by the authority of many eminent scholars, to say nothing of men of science, 15 who, at various times, have absolutely denied that any such doctrine is to be found in Genesis. If we are to listen to many expositors of no mean authority, we must believe that what seems so clearly defined in Genesis—as if very great pains had been taken that 20 there should be no possibility of mistake—is not the meaning of the text at all. The account is divided into periods that we may make just as long or as short as convenience requires. We are also to understand that it is consistent with the original text to believe 25 that the most complex plants and animals may have been evolved by natural processes, lasting for millions of years, out of structureless rudiments. A person who is not a Hebrew scholar can only stand aside and admire the marvellous flexibility of a language 30 which admits of such diverse interpretations. But assuredly, in the face of such contradictions of authority upon matters respecting which he is incom-

petent to form any judgment, he will abstain, as I do, from giving any opinion.

In the third place, I have carefully abstained from speaking of this as the Mosaic doctrine, because we are now assured upon the authority of the highest critics, and even of dignitaries of the Church, that there is no evidence that Moses wrote the Book of Genesis, or knew anything about it. You will understand that I give no judgment—it would be an impertinence upon my part to volunteer even a suggestion—upon such a subject. But, that being the state of opinion among the scholars and the clergy, it is well for the unlearned in Hebrew lore, and for the laity, to avoid entangling themselves in such a vexed question. Happily, Milton leaves us no excuse for doubting what he means, and I shall therefore be safe in speaking of the opinion in question as the Miltonic hypothesis.

Now we have to test that hypothesis. For my part, I have no prejudice one way or the other. If there is evidence in favor of this view, I am burdened by no theoretical difficulties in the way of accepting it; but there must be evidence. Scientific men get an awkward habit—no, I won't call it that, for it is a valuable habit—of believing nothing unless there is evidence for it; and they have a way of looking upon belief which is not based upon evidence, not only as illogical but as immoral. We will, if you please, test this view by the circumstantial evidence alone; for, from what I have said, you will understand that I do not propose to discuss the question of what testimonial evidence is to be adduced in favor of it. If those whose business it is to judge are not at one as to the authenticity

of the only evidence of that kind which is offered, nor as to the facts to which it bears witness, the discussion of such evidence is superfluous.

But I may be permitted to regret this necessity of rejecting the testimonial evidence the less, because the examination of the circumstantial evidence leads to the conclusion, not only that it is incompetent to justify the hypothesis, but that, so far as it goes, it is contrary to the hypothesis.

10 The considerations upon which I base this conclusion are of the simplest possible character. The Miltonic hypothesis contains assertions of a very definite character, relating to the succession of living forms.

It is stated that plants, for example, made their 15 appearance upon the third day, and not before.

And you will understand that what the poet means by plants are such plants as now live, the ancestors, in the ordinary way of propagation of like by like, of the trees and shrubs which flourish in the present world.

20 It must needs be so ; for, if they were different, either the existing plants have been the result of a separate origination since that described by Milton, of which we have no record, nor any ground for supposition that such an occurrence has taken place ; or else they 25 have arisen by a process of evolution from the original stocks.⁸

In the second place, it is clear that there was no animal life before the fifth day, and that, on the fifth day, aquatic animals and birds appeared. And it is 30 further clear that terrestrial living things, other than birds, made their appearance upon the sixth day, and

⁸ The use of the dilemma here and on p. 83 is very effective.

not before. Hence, it follows that, if, in the large mass of circumstantial evidence as to what really has happened in the past history of the globe we find indications of the existence of terrestrial animals, other than birds, at a certain period, it is perfectly certain ⁵ that all that has taken place since that time must be referred to the sixth day.

In the great Carboniferous formation, whence America derives so vast a proportion of her actual and potential wealth, in the beds of coal which have ¹⁰ been formed from the vegetation of that period, we find abundant evidence of the existence of terrestrial animals. They have been described, not only by European but by your own naturalists. There are to be found numerous insects allied to our cockroaches. ¹⁵ There are to be found spiders and scorpions of large size, the latter so similar to existing scorpions that it requires the practised eye of the naturalist to distinguish them. Inasmuch as these animals can be proved to have been alive in the Carboniferous epoch, ²⁰ it is perfectly clear that, if the Miltonic account is to be accepted, the huge mass of rocks extending from the middle of the Palæozoic formations to the uppermost members of the series, must belong to the day which is termed by Milton the sixth. But, further, ²⁵ it is expressly stated that aquatic animals took their origin upon the fifth day, and not before ; hence, all formations in which remains of aquatic animals can be proved to exist, and which therefore testify that such animals lived at the time when these formations ³⁰ were in course of deposition, must have been deposited during or since the period which Milton speaks

of as the fifth day. But there is absolutely no fossiliferous formation in which the remains of aquatic animals are absent. The oldest fossils in the Silurian rocks are exuviae of marine animals ; and if the view
5 which is entertained by Principal Dawson and Dr. Carpenter respecting the nature of the *Eozoön* be well founded, aquatic animals existed at a period as far antecedent to the deposition of the coal as the coal is from us ; inasmuch as the *Eozoön* is met with in
10 those Laurentian strata which lie at the bottom of the series of stratified rocks.⁹ Hence it follows, plainly enough, that the whole series of stratified rocks, if they are to be brought into harmony with Milton, must be referred to the fifth and sixth days,
15 and that we cannot hope to find the slightest trace of the products of the earlier days in the geological record. When we consider these simple facts, we see how absolutely futile are the attempts that have been made to draw a parallel between the story told by so
20 much of the crust of the earth as is known to us and the story which Milton tells. The whole series of fossiliferous stratified rocks must be referred to the last two days ; and neither the Carboniferous, nor any other, formation can afford evidence of the work
25 of the third day.

Not only is there this objection to any attempt to

⁹ A few years before this address, Canadian geologists gave the name *Eozoön* to a certain aggregate of minerals viewed by them as a fossilized organic body belonging to the *Foraminifera*.

30 There can, however, no longer be any doubt of the inorganic nature of the *Eozoön*. By the geologists who named the *Eozoön*, it was believed to be the oldest recognized form, to represent the dawn of life.—*Century Dict.*

establish a harmony between the Miltonic account and the facts recorded in the fossiliferous rocks, but there is a further difficulty. According to the Miltonic account, the order in which animals should have made their appearance in the stratified rocks would 5 be this : Fishes, including the great whales, and birds ; after them, all varieties of terrestrial animals except birds. Nothing could be further from the facts as we find them ; we know of not the slightest evidence of the existence of birds before the Jurassic, 10 or perhaps the Triassic, formation ; while terrestrial animals, as we have just seen, occur in the Carboniferous rocks.

If there were any harmony between the Miltonic account and the circumstantial evidence, we ought to 15 have abundant evidence of the existence of birds in the Carboniferous, the Devonian, and the Silurian rocks. I need hardly say that this is not the case, and that not a trace of birds makes its appearance until the far later period which I have mentioned. 20

And again, if it be true that all varieties of fishes and the great whales, and the like, made their appearance on the fifth day, we ought to find the remains of these animals in the older rocks—in those which were deposited before the Carboniferous epoch. Fishes we 25 do find, in considerable number and variety ; but the great whales are absent, and the fishes are not such as now live. Not one solitary species of fish now in existence is to be found in the Devonian or Silurian formations. Hence we are introduced afresh to the 30 dilemma which I have already placed before you : either the animals which came into existence on the

fifth day were not such as those which are found at present, are not the direct and immediate ancestors of those which now exist ; in which case either fresh creations of which nothing is said, or a process of evolution must have occurred ; or else the whole story must be given up, as not only devoid of any circumstantial evidence, but contrary to such evidence as exists.

I placed before you in a few words, some little time ago, a statement of the sum and substance of Milton's hypothesis. Let me now try to state, as briefly, the effect of the circumstantial evidence bearing upon the past history of the earth which is furnished, without the possibility of mistake, with no chance of error as to its chief features, by the stratified rocks. What we find is, that the great series of formations represents a period of time of which our human chronologies hardly afford us a unit of measure. I will not pretend to say how we ought to estimate this time, in millions or in billions of years. For my purpose, the determination of its absolute duration is wholly unessential. But that the time was enormous there can be no question.

It results from the simplest methods of interpretation, that leaving out of view certain patches of metamorphosed rocks, and certain volcanic products, all that is now dry land has once been at the bottom of the waters. It is perfectly certain that, at a comparatively recent period of the world's history—the Cretaceous epoch—none of the great physical features which at present mark the surface of the globe existed. It is certain that the Rocky Mountains were

not. It is certain that the Himalaya Mountains were not. It is certain that the Alps and the Pyrenees had no existence. The evidence is of the plainest possible character, and is simply this:—We find raised up on the flanks of these mountains, elevated by the 5 forces of upheaval which have given rise to them, masses of Cretaceous rock which formed the bottom of the sea before those mountains existed. It is therefore clear that the elevatory forces which gave rise to the mountains operated subsequently to the Cre-10 taceous epoch; and that the mountains themselves are largely made up of the materials deposited in the sea which once occupied their place. As we go back in time, we meet with constant alternations of sea and land, of estuary and open ocean; and, in cor-15 respondence with these alternations, we observe the changes in the fauna and flora to which I have referred.

But the inspection of these changes gives us no right to believe that there has been any discontinuity in 20 natural processes. There is no trace of general cataclysms, of universal deluges, or sudden destructions of a whole fauna or flora. The appearances which were formerly interpreted in that way have all been shown to be delusive, as our knowledge 25 has increased and as the blanks which formerly appeared to exist between the different formations have been filled up. That there is no absolute break between formation and formation, that there has been no sudden disappearance of all the forms of life and 30 replacement of them by others, but that changes have gone on slowly and gradually, that one type has died

out and another has taken its place, and that thus, by insensible degrees, one fauna has been replaced by another, are conclusions strengthened by constantly increasing evidence. So that within the whole of the 5 immense period indicated by the fossiliferous stratified rocks, there is assuredly not the slightest proof of any break in the uniformity of Nature's operations, no indication that events have followed other than a clear and orderly séquence.

10 That, I say, is the natural and obvious teaching of the circumstantial evidence contained in the stratified rocks. I leave you to consider how far, by any ingenuity of interpretation, by any stretching of the meaning of language, it can be brought into harmony
15 with the Miltonic hypothesis.

ARGUMENT IN GENERAL.

Lord Erskine.

Born 1750. Died 1823.

SPEECH IN BEHALF OF LORD GEORGE GORDON WHEN
INDICTED FOR HIGH TREASON.

Delivered before the Court of the King's Bench, February 5, 1781.

[“Lord George Gordon, a member of the House of Commons, was a young Scottish nobleman of weak intellect and enthusiastic feelings. He had been chosen president of the Protestant Association, whose object was to procure the repeal of Sir George Saville’s bill in favor of the Catholics. In this capacity, he directed the association to meet him in St. George’s Fields, and proceed thence to the Parliament House with a petition for the repeal of the bill. Accordingly, about forty thousand persons of the middling classes assembled on Friday, the 2d of June, 1780, and after forming a procession, moved forward till they blocked up all the avenues to the House of Commons. They had no arms of any kind, and were most of them orderly in their conduct, though individuals among them insulted some members of both Houses who were passing into the building, requiring them to put blue cockades on their hats, and to cry ‘No Popery !’

“Lord George presented the petition, but the House refused to consider it at that time, by a vote of 192 to 6. The multitude now became disorderly, and after the House adjourned, bodies of men proceeded to demolish the Catholic chapels at the residences of the foreign ministers. From this moment the whole affair changed its character. Desperate men, many of them thieves

and robbers, took the lead. Not only were Catholic chapels set on fire, but the London prisons were broken open and destroyed ; thirty-six fires were blazing at one time during the night. The town was for some days completely in the power of the multitude. Lord Mansfield's house was destroyed ; the breweries and distilleries were broken open, and the mob became infuriated with liquor ; and for a period there was reason to apprehend that the whole of the metropolis might be made one general scene of conflagration. The military were at last called in from the country, and, after a severe conflict, the mob was put down ; but not until nearly five hundred persons had been killed or wounded, exclusive of those who perished from the effects of intoxication.

"The government had been taken by surprise. No adequate provision was made to guard against violence, and as the riots went on, all authority for a time seemed to be paralyzed or extinct. When order was at last restored, the magistrates, as is common with those who have neglected their duty, endeavored to throw the blame on others—they resolved to make Lord George Gordon their scapegoat. He was accordingly arraigned for high treason ; and such was the excitement of the public mind, such the eagerness to have someone punished, that he was in imminent danger of being made the victim of public resentment. It was happy for him that, in addition to Mr. (afterward Lord) Kenyon, his senior counsel, a man of sound mind, but wholly destitute of eloquence, he had chosen Mr. Erskine, as a Scotchman, to aid in his defense. It was the means probably of saving his life.

"The Attorney-General opened the case in behalf of the Crown, contending (1) That the prisoner, in assembling the multitude round the two Houses of Parliament, was guilty of high treason, if he did so with a view to overawe and intimidate the Legislature, and enforce his purposes by numbers and violence (a doctrine fully confirmed by the court) ; and (2) That the overt acts proved might be fairly construed into such a design, and were the only evidence by which a traitorous intention, in such a case, could be shown. When the evidence for the Crown was received, Mr. Kenyon addressed the jury in behalf of Lord George Gordon, but in a

manner so inefficient that, when he sat down, ‘the friends of Lord George were in an agony of apprehension.’ According to the usual practice Mr. Erskine should now have followed, before the examination of his client’s witnesses. But he adroitly changed the order, claiming as a privilege of the prisoner (for which he adduced a precedent) to have the evidence in his favor received at once. His object was, by meeting the evidence of the Crown with that of Lord George’s witnesses as early as possible, to open a way for being heard with more favor by the jury, and of commenting upon the evidence on *both* sides as compared together. The Rev. Mr. Middleton, a member of the Protestant Association, swore that he had watched the prisoner’s conduct, and that he appeared to be always actuated by the greatest loyalty to the King and attachment to the Constitution—that his speeches at the meetings of the association, at Coachmakers’ Hall, never contained an expression tending directly or indirectly to a repeal of the bill by *force*—that he desired the people not even to carry sticks in the procession, and begged that riotous persons might be delivered to the constables. Mr. Evans, an eminent surgeon, declared that he saw Lord George Gordon in the center of one of the divisions in St. George’s Fields, and that it appeared from his conduct and expressions that he wished and endeavored to prevent all disorder. This was confirmed by others, and it was proved by decisive evidence that the bulk of the people round the Parliament House and in the lobby were not members of the Association, but idlers, vagabonds, and pickpockets, who had thrust themselves in; so that the persons who insulted the members were of a totally different class from those who formed the original procession. The Earl of Lonsdale swore that he took the prisoner home from the House in his carriage; that great multitudes surrounded Lord George, inquiring the fate of the petition: that he answered it was uncertain, and earnestly entreated them to retire to their homes and be quiet.

“The evidence was not closed until after midnight, when Mr. Erskine addressed the jury in the following speech. The jury, after being charged by Lord Mansfield, withdrew at three o’clock in the morning, and speedily returned with the verdict—NOT GUILTY!”—*Goodrich.*]

GENTLEMEN OF THE JURY:¹ Mr. Kenyon having informed the court that we propose to call no other witnesses, it is now my duty to address myself to you as counsel for the noble prisoner at the bar, the whole evidence being closed. I use the word *closed*, because it certainly is not finished, since I have been obliged to leave the seat in which I sat, to disentangle myself from the volumes of men's names, which lay there under my feet, whose testimony, had it been necessary for the defense, would have confirmed all the facts that are already in evidence before you.²

¹ The construction of this speech is apparently very simple, but it is the simplicity of genius, and its apparently natural development helped to produce in the minds of the jury the feeling ¹⁵ Erskine sought, that the simple, the natural, the common-sense belief must be that Lord Gordon was an innocent, persecuted man. Analysis of the case had shown Lord Erskine before he spoke that the whole case turned on the definition of treason to be used in it ; and about a definition of it he made his whole case ²⁰ center. Roughly the plan of this simplification of a case open to all kinds of entanglement,—which the prosecution had evidently been willing to make obscure,—is this : 1. To make the jury feel the importance, the indispensability of a clear definition of treason ; 2. To state clearly a definition that even his opponents ²⁵ must accept ; 3. To point out under what part of this the prisoner might be accused, and rigorously excluding all other parts, to make the jury see that to an application of this to the prisoner's conduct the case must be confined ; 4. Using this accepted test, to see what bearing on it the evidence of the prosecution had ; 5. ³⁰ To apply this test to the evidence for the defendant ; 6. To recapitulate and to close. The speech flows apparently spontaneously, yet the most careful analysis prepared for it ; every extraneous idea was excluded ; every sentence had its work to do. If it be the highest art that conceals art, this speech is certainly a masterpiece.

³⁵ ² "Mr. Erskine shows great dexterity in turning a slight circum-

Gentlemen, I feel myself entitled to expect, both from you and from the court, the greatest indulgence and attention. I am, indeed, a greater object of your compassion than even my noble friend whom I am defending. He rests secure in conscious innocence, 5 and in the well-placed assurance that it can suffer no stain in your hands.³ Not so with ME. I stand before you a troubled, I am afraid a *guilty* man, in having presumed to accept of the awful task which I am now called upon to perform—a task which my learned 10 stance at the opening of his speech into a means of impressing the jury *from the first* with a sense of his client's innocence. He had sat thus far in the front row, with large files of papers at his feet, but he now stepped back to obtain greater freedom of movement; and this he represents as done to escape from 'the volumes of 15 men's names' who stood ready to confirm the evidence in favor of Lord Gordon! So the next paragraph, though in form a plea for indulgence to himself as a young speaker, is in fact the strongest possible assumption of the prisoner's innocence, since the *guilt* referred to consisted in his venturing to endanger, by his 20 inexperience, the cause of one who stood secure himself 'in conscious innocence.' There is hardly anything for which Mr. Erskine deserves more to be studied, than his thus making every circumstance conspire to produce the desired impression. All is so easy and natural that men never think of it as the result of 25 design or premeditation, and here lies his consummate skill as an advocate."—*Goodrich.*

³ The persuasive appeals in this speech are subtly handled. Lord Erskine does not once make a mere appeal to the emotions. When, here, he pleads for sympathy as inexperienced, or, on 30 p. 130, gracefully compliments Lord Mansfield, his words subserve a second purpose. The plea goes far to establish an assumption of the innocence of Lord George Gordon; the compliment makes a proof of his innocence. As is pointed out later, the omission at the end of the speech of any emotional appeal is far stronger 35 than any appeal could have been.

friend who spoke before me, though he has justly risen, by extraordinary capacity and experience, to the highest rank in his profession, has spoken of with that distrust and diffidence which becomes every 5 Christian in a cause of blood. If Mr. Kenyon has such feelings, think what mine must be. Alas ! gentlemen, who am I ? A young man of little experience, unused to the bar of criminal courts, and sinking under the dreadful consciousness of my defects. 10 I have, however, this consolation, that no ignorance nor inattention on my part can possibly prevent you from seeing, under the direction of the Judges, that the Crown has established no case of treason.

Gentlemen, I did expect that the Attorney-General, in opening a great and solemn state prosecution, would have at least indulged the advocates for the prisoner with his notions on the law, as applied to the case before you, in less general terms.⁴ It is very common, indeed, in little civil actions, to make such 20 obscure introductions by way of *trap*. But in criminal cases it is unusual and unbecoming ; because the right of the Crown to reply, even where no witnesses are called by the prisoner, gives it thereby the advantage of replying without having given scope for 25 observations on the principles of the opening, with which the reply must be consistent.

⁴ "The reader cannot fail to remark how admirably one thought grows out of another in the transition, all of them important and all preparing the mind to be deeply interested in the discussion of 30 the subject to which it leads, the nature of high treason. The same characteristic runs throughout the whole speech."—*Goodrich.*

One observation he has, however, made on the subject, in the truth of which I heartily concur, viz., that the crime of which the noble person at your bar stands accused, is the very highest and most atrocious that a member of civil life can possibly commit ; because it is not, like all other crimes, merely an injury to society from the breach of some of its reciprocal relations; but is an attempt utterly to dissolve and destroy society altogether. 5

In nothing, therefore, is the wisdom and justice of our laws so strongly and eminently manifested as in the rigid, accurate, cautious, explicit, unequivocal definition of what shall constitute this high offense. For, high treason consisting in the breach and dissolution of that allegiance which binds society together, if it were left ambiguous, uncertain, or undefined, all the other laws established for the personal security of the subject would be utterly useless ; since this offense, which, from its nature, is so capable of being created and judged of by the rules of political expediency on the spur of the occasion, would be a rod at will to bruise the most virtuous members of the community, whenever virtue might become troublesome or obnoxious to a bad government. 15 20

Injuries to the persons and properties of our neighbors, considered as individuals, which are the subjects of all other criminal prosecutions, are not only capable of greater precision, but the powers of the state can be but rarely interested in straining them beyond their legal interpretation. But if treason, 25 where the government is directly offended, were left to the judgment of its ministers, without any bounda- 30

ries—nay, without the most broad, distinct, and inviolable boundaries marked out by the law—there could be no public freedom. The condition of an Englishman would be no better than a slave's at the 5 foot of a Sultan; since there is little difference whether a man dies by the stroke of a saber, without the forms of a trial, or by the most pompous ceremonies of justice, if the crime could be made at pleasure by the state to fit the fact that was to be tried. Would to God, gentlemen of the jury, that this were an observation of theory alone, and that the page of our history was not blotted with so many melancholy, disgraceful proofs of its truth! But these proofs, melancholy and disgraceful as they are, 15 have become glorious monuments of the wisdom of our fathers, and ought to be a theme of rejoicing and emulation to us. For, from the mischiefs constantly arising to the state from every extension of the ancient law of treason, the ancient law of treason has been 20 always restored, and the Constitution at different periods washed clean; though, unhappily, with the blood of oppressed and innocent men.

I. When I speak of the ancient law of treason, I mean the venerable statute of King Edward the Third, 25 on which the indictment you are now trying is framed—a statute made, as its preamble sets forth, for the more precise definition of this crime, which has not, by the common law, been sufficiently explained; and consisting of different and distinct members, the plain 30 unextended letter of which was thought to be a sufficient protection to the person and honor of the Sovereign, and an adequate security to the laws committed

to his execution. I shall mention only two of the number, the others not being in the remotest degree applicable to the present accusation.⁶

(1) *To compass or imagine the death of the King*: such imagination or purpose of the mind (visible only 5 to its great Author) being manifested by some open act; an institution obviously directed, not only to the security of his natural person, but to the stability of the government, since the life of the Prince is so interwoven with the Constitution of the state, that an 10 attempt to destroy the one is justly held to be rebellious conspiracy against the other.

(2) (Which is the crime charged in the indictment) *To levy war against him in his realm*: a term that one would think could require no explanation, nor admit 15 of any ambiguous construction, among men who are willing to read laws according to the plain signification of the language in which they are written; but which has, nevertheless, been an abundant source of that *constructive* cavil which this sacred and valuable 20 act was made expressly to prevent. The real meaning of this branch of it, as it is bottomed in policy, reason, and justice; as it is ordained in plain, unambiguous words; as it is confirmed by the precedents 25 of justice, and illustrated by the writings of the great

⁶ "In this statement of the law of treason, perfectly fair and accurate as it is, there is one thing which marks the consummate skill of Mr. Erskine. He shapes it throughout with a *distinct reference to the facts of the case*, as they were afterward to come out in evidence. The points made most prominent are the points 30 he had occasion afterward to use. Thus the jury were prepared, without knowing it, to look at the evidence under aspects favorable to the prisoner."—*Goodrich*.

lights of the law in different ages of our history, I shall, before I sit down, impress upon your minds as a safe, unerring standard by which to measure the evidence you have heard. At present I shall only say, 5 that far and wide as judicial decisions have strained the construction of levying war beyond the warrant of the statute, to the discontent of some of the greatest ornaments of the profession, they hurt not me. As a citizen I may disapprove of them, but as advocate for 10 the noble person at your bar, I need not impeach their authority. For none of them have said more than this, "that war may be levied against the King in his realm, not only by an insurrection to change or to destroy the fundamental Constitution of the govern- 15 ment itself by rebellious war ; but, by the same war, to endeavor to suppress the execution of the laws it has enacted, or to violate and overbear the protection they afford, not to individuals (which is a private wrong) but to any general class or description of the 20 community, *by premeditated, open acts of violence, hostility, and force.*"

Gentlemen, I repeat these words, and call solemnly on the judges to attend to what I say, and to contradict me if I mistake the law, " *By premeditated, open acts of violence, hostility, and force,*" nothing equivocal, nothing ambiguous, no intimidations or overawings, which signify nothing precise or certain (because what frightens one man or set of men may have no effect upon another), but that which *compels and coerces—* 25 *open violence and force.*

Gentlemen, this is not only the whole text ; but I submit it to the learned judges, under whose correc-

tion I am happy to speak, an accurate explanation of the statute of treason, as far as it relates to the present subject, taken in its utmost extent of judicial construction; and which you cannot but see, not only in its letter, but in its most strained signification, is confined 5 to acts which *immediately, openly, and unambiguously* strike at the very root and being of government, and not to any other offenses, however injurious to its peace.

Such were the boundaries of high treason marked 10 out in the reign of Edward the Third; and as often as the vices of bad princes, assisted by weak, submissive Parliaments, extended state offenses beyond the strict letter of that act, so often the virtue of better princes and wiser Parliaments brought them back¹⁵ again. A long list of new treasons, accumulated in the wretched reign of Richard the Second, from which (to use the language of the act that repealed them) "no man knew what to do or say for doubt of the pains of death," were swept away in the first year of Henry the 20 Fourth, his successor; and many more, which had again sprung up in the following distracted, arbitrary reigns, putting tumults and riots on a footing with armed rebellion, were again leveled in the first year of Queen Mary, and the statute of Edward made once²⁵ more the standard of treasons. The acts, indeed, for securing his present Majesty's illustrious House from the machinations of those very Papists, who are now so highly in favor, have since that time been added to the list. But these not being applicable to the pres- 30 ent case, the ancient statute is still our only guide; which is so plain and simple in its object, so explicit

and correct in its terms, as to leave no room for intrinsic error ; and the wisdom of its authors has shut the door against all extension of its plain letter ; declaring, in the very body of the act itself, that nothing 5 out of that plain letter should be brought within the pale of treason by *inference* or *construction*, but that, if any such cases happened, they should be referred to the Parliament.

This wise restriction has been the subject of much 10 just eulogium by all the most celebrated writers on the criminal law of England. Lord Coke says the Parliament that made it was on that account called *Benedictum*, or Blessed ; and the learned and virtuous Judge Hale, a bitter enemy and opposer of constructive treason, speaks of this sacred institution with 15 that enthusiasm which it cannot but inspire in the breast of every lover of the just privileges of mankind.

Gentlemen, in these mild days, when juries are so free and judges so independent, perhaps all these observations 20 might have been spared as unnecessary.

But they can do no harm ; and this history of treason, so honorable to England, cannot (even imperfectly as I have given it) be unpleasant to Englishmen. At all events, it cannot be thought an inapplicable introduction 25 to saying that Lord George Gordon, who stands before you indicted for that crime, is not, *cannot* be guilty of it, unless he has levied war against the King in his realm, contrary to the plain letter, spirit, and intention of the act of the twenty-fifth of Edward the 30 Third—to be extended by no new or occasional construction, to be strained by no fancied analogies, to be measured by no rules of political expediency, to be

judged of by no theory, to be determined by the wisdom of no individual, however wise, but to be expounded by the simple, genuine letter of the law.

Gentlemen, the only overt act charged in the indictment, is the assembling the multitude, which we all of us remember went up with the petition of the Associated Protestants, on the second day of last June. In addressing myself to a humane and sensible jury of Englishmen, sitting in judgment on the life of a fellow-citizen, more especially under the direction of a court so filled as this is, I trust I need not remind you that the purposes of that multitude, as *originally* assembled on that day, and the purposes and acts of him who assembled them, are the sole object of investigation.⁶ All the dismal consequences which followed, and which naturally link themselves with this subject in the firmest minds, must be altogether cut off and abstracted from your attention, further than the evidence warrants their admission. If the evidence had been *co-extensive* with these consequences; if it had been proved that the same multitude, under the direction of Lord George Gordon, had afterward attacked the Bank, broke open the prisons, and set London in a conflagration, I should not now be addressing you. Do me the justice to believe that I am neither so foolish as to imagine I could have defended him, nor so profligate to wish it if I could. But when it has appeared, not only by the evidence in the cause, but

⁶ A reader should note the insistence throughout of Lord Erskine that the idea he wishes to bring out, and that idea only, shall be considered, and the firmness with which the argument is kept from wandering to side issues.

by the evidence of the thing itself—by the issues of life, which may be called the evidence of Heaven—that these dreadful events were either entirely unconnected with the assembling of that multitude to attend the 5 petition of the Protestants, or, at the very worst, the unforeseen, undesigned, unabettet, and deeply regretted consequences of it, I confess the seriousness and solemnity of this trial sink and dwindle away. Only abstract from your minds all that misfortune, 10 accident, and the wickedness of others have brought upon the scene, and the cause requires no advocate. When I say that it requires no advocate, I mean that it requires no argument to screen it from the guilt of *treason*. For though I am perfectly convinced of the 15 purity of my noble friend's intentions, yet I am not bound to defend his prudence, nor to set it up as a pattern for imitation : since you are not trying him for imprudence, for indiscreet zeal, or for want of foresight and precaution, but for a deliberate and malicious 20 predetermination to overpower the laws and government of his country, by hostile, rebellious force.

The indictment, therefore, first charges that the multitude assembled on the 2d of June "were armed, and arrayed in a warlike manner"; which, indeed 25 if it had omitted to charge, we should not have troubled you with any defense at all, because no judgment could have been given on so defective an indictment. For the statute never meant to put an unarmed assembly of citizens on a footing with armed rebellion; 30 and the crime, whatever it is, must always appear on the record to warrant the judgment of the court.

It is certainly true that it has been held to be matter

of evidence, and dependent on circumstances, what numbers, or species of equipment and order, though not the regular equipment and order of soldiers, shall constitute an army, so as to maintain the averment in the indictment of a warlike array ; and, likewise, what kind of violence, though not pointed at the King's person, or the existence of the government, shall be construed to be war against the King. But as it has never yet been maintained in argument, in any court of the kingdom, or even speculated upon in theory, that a multitude, without either weapons offensive or defensive of any sort or kind, and yet not supplying the want of them by such acts of violence as multitudes sufficiently great can achieve without them, was a hostile army within the statute ; as it has never been asserted, by the wildest adventurer in constructive treason, that a multitude, armed with nothing, threatening nothing, and doing nothing, was an army levying war ; I am entitled to say that the evidence does not support the first charge in the indictment ; but that, on the contrary, it is manifestly false—false in the knowledge of the Crown, which prosecutes it—false in the knowledge of every man in London, who was not bed-ridden on Friday, the 2d of June, and who saw the peaceable demeanor of the Associated Protestants.

But you will hear, no doubt, from the Solicitor-General (for they have saved all their intelligence for the reply) that fury supplies arms ; *furor arma ministrat* ; and the case of Damaree⁷ will, I suppose, be

⁷ “ In this case a mob assembled for the purpose of destroying all the Protestant Dissenting meeting-houses, and actually pulled down two.—8 State Trials, 218.”—*Goodrich*.

referred to ; where the people assembled had no banners or arms, but only clubs and bludgeons ; yet the ringleader, who led them on to mischief, was adjudged to be guilty of high treason for levying war. This judgment it is not my purpose to impeach, for I have no time for digression to points that do not press upon me. In the case of Damaree, the mob, though not regularly armed, were provided with such weapons as best suited their mischievous designs. Their ⁵ signs were, besides, open and avowed, and all the mischief was done that could have been accomplished, if they had been in the completest armor. They burned Dissenting meeting-houses protected by law, and Damaree was taken at their head, *in flagrante delicto* ¹⁰ [in the crime itself], with a torch in his hand, not only in the very act of destroying one of them, but leading on his followers, *in person*, to the *avowed* destruction of all the rest. There could, therefore, be no doubt of his purpose and intention, nor any great doubt that ¹⁵ the perpetration of such purpose was, from its generality, high treason, if perpetrated by such a force as distinguishes a felonious riot from a treasonable levying of war.⁸ The principal doubt, therefore, in that case was, whether such an unarmed, riotous force was ²⁰ *war*, within the meaning of the statute ; and on that point very learned men have differed ; nor shall I attempt to decide between them, because in this one point they all agree. Gentlemen, I beseech you to at-

⁸ "To constitute a treasonable levying of war there must be an ³⁰ insurrection ; there must be force accompanying that insurrection ; and it must be for an object of a general nature. *Regina v. Frost*, 9 Carrington and Payne, 129." — *Goodrich*.

tend to me here. I say on this point they all agree, that it is the *intention* of assembling them which forms the guilt of treason. I will give you the words of high authority, the learned Foster, whose private opinions will, no doubt, be pressed upon you as a doctrine and law, and which, if taken together, as all opinions ought to be, and not extracted in smuggled sentences to serve a shallow trick, I am contented to consider as authority.

That great judge, immediately after supporting the 10 case of Damaree, as a levying war within the statute, against the opinion of Hale in a similar case, namely, the destruction of bawdy-houses, which happened in his time, says, “The true criterion, therefore, seems to be—*Quo animo* did the parties assemble?—with 15 what intention did they meet?” On that issue, then, in which I am supported by the whole body of the criminal law of England, concerning which there are no practical precedents of the courts that clash, nor even abstract opinions of the closet that differ, I come 20 forth with boldness to meet the Crown. For, even supposing that peaceable multitude—though not hostilely arrayed—though without one species of weapon among them—though assembled without plot or disguise by a public advertisement, exhorting, nay, commanding 25 peace, and inviting the magistrates to be present to restore it, if broken—though composed of thousands who are now standing around you, unimpeached and unreproved, yet who are all principals in treason, if such assembly was treason; supposing, I say, this multitude to be, nevertheless, an army within the statute, still the great question would remain be-

hind, on which the guilt or innocence of the accused must singly depend, and which it is your exclusive province to determine, namely, whether they were assembled by my noble client for the traitorous purpose charged in the indictment? For war must not only be levied, but it must be levied against the King in his realm; *i. e.*, either directly against his person to alter the Constitution of the government, of which he is the head, or to suppress the laws committed to his execution by rebellious force. You must find that Lord George Gordon assembled these men with that traitorous intention. You must find not merely a riotous, illegal petitioning—not a tumultuous, indecent importunity to influence Parliament, not the compulsion of motive, from seeing so great a body of people united in sentiment and clamorous supplication—but the absolute, unequivocal compulsion of force, from the hostile acts of numbers united in rebellious conspiracy and arms.

This is the issue you are to try, for crimes of all denominations consist wholly in the purpose of the human will producing the act. "*Actus non facit reum nisi mens sit rea.*" The act does not constitute guilt, unless *the mind* be guilty. This is the great text from which the whole moral of penal justice is deduced. It stands at the top of the criminal page, throughout all the volumes of our humane and sensible laws, and Lord Chief Justice Coke, whose chapter on this crime is the most authoritative and masterly of all his valuable works, ends almost every sentence with an emphatical repetition of it.

The indictment *must* charge an open *act*, because

the purpose of the mind, which is the object of trial, can only be known by actions. Or, again to use the words of Foster, who has ably and accurately expressed it, “the traitorous purpose is the treason ; the overt act, the means made use of to effectuate the 5 intentions of the heart.” But why should I borrow the language of Foster, or of any other man, when the language of the indictment itself is lying before our eyes ? What does it say ? Does it directly charge the overt act as in itself constituting the 10 crime ? No ; it charges that the prisoner “ maliciously and traitorously did *compass, imagine, and intend to raise and levy war and rebellion against the King* ” ; this is the malice prepense of treason ; and that to fulfill and bring to effect such traitorous compassings and in- 15 tentions, he did, on the day mentioned in the indictment, actually assemble them, and levy war and rebellion against the King. Thus the law, which is made to correct and punish the wickedness of the heart, and not the unconscious deeds of the body, 20 goes up to the fountain of human agency, and arraigns the lurking mischief of the soul, dragging it to light by the evidence of open acts. The hostile *mind* is the crime ; and, therefore, unless the matters that are in evidence before you do, beyond all doubt or pos- 25 sibility of error, convince you that the prisoner is a determined traitor *in his heart*, he is not guilty.

It is the same principle which creates all the various degrees of homicide, from that which is excusable to the malignant guilt of murder. The fact is the same 30 in all. The death of the man is the imputed crime ; but the *intention* makes all the difference ; and he who

killed him is pronounced a murderer—a simple felon—or only an unfortunate man, as the circumstances, by which his mind has been deciphered to the jury, show it to have been cankered by deliberate wickedness or stirred up by sudden passions.

Here an immense multitude was, beyond all doubt, assembled on the 2d of June. But whether HE that assembled them be guilty of high treason, of a high misdemeanor, or only of a breach of the act of 10 King Charles the Second⁹ against tumultuous petitioning (if such an act still exists), depends wholly upon the evidence of his purpose in assembling them, to be gathered by you, and by you alone, from the whole tenor of his conduct ; and to be gathered, not 15 by inference, or probability, or reasonable presumption, but, in the words of the act, *proably*; that is, in the full, unerring force of demonstration. You are called, upon your oaths, to say, *not* whether Lord George Gordon assembled the multitudes in the place 20 charged in the indictment, for that is not denied ; but

⁹“ By 13 Car. II., st. 1, c. 5, passed in consequence of the tumults on the opening of the memorable Parliament of 1640, it is provided that no petition to the King or either House of Parliament, for any alteration in Church or State, shall be signed by 25 above twenty persons, unless the matter thereof be approved by three justices of the peace, or the major part of the grand jury in the county ; and in London by the Lord Mayor, Aldermen, and Common Council : nor shall any petition be presented by more than ten persons at a time. But under these regulations, it is 30 declared by the Bill of Rights, 1 W. and M., st. 2, c. 2, that the subject hath a right to petition. Lord Mansfield told the jury that the court were clearly of opinion that this statute, 13 Car. II., was not in any degree affected by the Bill of Rights, but was still in force. Doug., 571.”—Goodrich.

whether it appears, by the facts produced in evidence for the Crown when confronted with the proofs which we have laid before you, that he assembled them in hostile array and with a hostile mind, to take the laws into his own hands by main force, and to dissolve the 5 Constitution of the government, unless his petition should be listened to by Parliament.

That is *your* exclusive province to determine. The court can only tell you what acts the law, in its general theory, holds to be high treason, on the general 10 assumption that such acts proceed from traitorous purposes. But they must leave it to *your* decision, and to *yours* alone, whether the acts proved appear, in the present instance, under all the circumstances, to have arisen from the causes which form the essence of this 15 high crime.

Gentlemen, you have now heard the law of treason ; first, in the abstract, and secondly, as it applies to the general features of the case ; and you have heard it with as much sincerity as if I had addressed you upon 20 my oath from the bench where the judges sit. I declare to you solemnly, in the presence of that great Being at whose bar we must all hereafter appear, that I have used no one art of an advocate, but have acted the plain unaffected part of a Christian man, instruct- 25 ing the consciences of his fellow-citizens to do justice. If I have deceived you on this subject, I am myself deceived ; and if I am misled through ignorance, my ignorance is incurable, for I have spared no pains to understand it. I am not stiff in opinions ; but 30 before I change any of those that I have given you to-day, I must see some direct monument of justice

that contradicts them. For the law of England pays no respect to theories, however ingenious, or to authors, however wise ; and therefore, unless you hear me refuted by a series of direct precedents, and not
5 by vague doctrine, *if you wish to sleep in peace, follow me.*

II. And now the most important part of our task begins, namely, the application of the evidence to the doctrines I have laid down. For trial is nothing more
10 than the reference of facts to a certain rule of action, and a long recapitulation of them only serves to distract and perplex the memory, without enlightening the judgment, unless the great standard principle by
15 which they are to be measured is fixed and rooted in the mind. When that is done (which I am confident has been done by you), everything worthy of observation falls naturally into its place, and the result is safe and certain.

Gentlemen, it is already in proof before you (indeed
20 it is now a matter of history), that an act of Parliament passed in the session of 1778, for the repeal of certain restrictions, which the policy of our ancestors had imposed upon the Roman Catholic religion, to prevent its extension, and to render its limited toleration
25 harmless ; restrictions, imposed *not* because our ancestors took upon them to pronounce that faith to be offensive to God, but because it was incompatible with good faith to man—being utterly inconsistent with allegiance to a Protestant government, from
30 their oaths and obligations to which it gave them not only a release, but a crown of glory, as the reward of treachery and treason.

It was, indeed, with astonishment that I heard the Attorney-General stigmatize those wise regulations of our patriot ancestors with the title of factious and cruel impositions on the consciences and liberties of their fellow-citizens. Gentlemen, they were, *at the time*, wise and salutary regulations ; regulations to which this country owes its freedom, and his Majesty his crown—a crown which he wears under the strict entail of professing and protecting that religion which they were made to repress ; and which I know my noble friend at the bar joins with me, and with all good men, in wishing that he and his posterity may wear forever.¹⁰

It is not my purpose to recall to your minds the fatal effects which bigotry has, in former days, produced in this island. I will not follow the example the Crown has set me, by making an attack upon your passions, on subjects foreign to the object before you. I will not call your attention from those flames, kindled by a villainous banditti (which they have thought fit, in defiance of evidence, to introduce), by bringing before your eyes the more cruel flames, in which the bodies of our expiring, meek, patient, Christian fathers were, little more than a century ago, consuming in

¹⁰ “ Erskine here gives great prominence to his views of the original necessity of the law of 1778, confirming them by pointed references in the next paragraph to the persecuting spirit of Popery in order to enforce his next leading thought ; namely, that the Protestant Association originated in justifiable feelings, a point which was important to the defense of his client. This mode of shaping one part of his speech to prepare the way for another part, and to support it, is one of the most admirable qualities of Mr Erskine.”—*Goodrich.*

Smithfield. I will not call up from the graves of martyrs all the precious holy blood that has been spilled in this land, to save its established government and its reformed religion from the secret villainy and
5 the open force of Papists. The cause does not stand in need even of such honest arts ; and I feel my heart too big voluntarily to recite such scenes, when I reflect that some of my own, and my best and dearest progenitors, from whom I glory to be descended, ended
10 their innocent lives in prisons and in exile, *only because they were Protestants.*

Gentlemen, whether the great lights of science and of commerce, which, since those disgraceful times, have illuminated Europe, may, by dispelling these
15 shocking prejudices, have rendered the Papists of this day as safe and trusty subjects as those who conform to the national religion established by law, I shall not take upon me to determine. It is wholly unconnected with the present inquiry. We are not
20 trying a question either of divinity or civil policy ; and I shall, therefore, not enter at all into the motives or merits of the act that produced the Protestant petition to Parliament. It was certainly introduced by persons who cannot be named by any good citizen
25 without affection and respect.¹¹ But this I will say, without fear of contradiction, that it was sudden and unexpected ; that it passed with uncommon precipita-

¹¹ "The bill was brought in by Sir George Saville, and supported, among others, by Mr. Dunning, Mr. Thurlow, and Lord
30 Beauchamp, and passed into an act without any opposition in the House of Commons, and with very slight opposition in the Lords, and the King was known to have been favorable to it."—*Goodrich.*

tion, considering the magnitude of the object ; that it underwent no discussion ; and that the heads of the Church, the constitutional guardians of the national religion, were never consulted upon it. Under such circumstances, it is no wonder that many sincere 5 Protestants were alarmed ; and they had a right to spread their apprehensions. It is the privilege and the duty of all the subjects of England to watch over their religious and civil liberties, and to approach either their representatives or the Throne with their 10 fears and their complaints—a privilege which has been bought with the dearest blood of our ancestors, and which is confirmed to us by law, as our ancient birth-right and inheritance.

Soon after the repeal of the act the Protestant 15 Association began, and, from small beginnings, extended over England and Scotland. A deed of association was signed, *by all legal means* to oppose the growth of Popery ; and which of the advocates for the Crown will stand up and say that such an union was illegal ? 20 Their union was perfectly constitutional ; there was no obligation of secrecy ; their transactions were all public ; a committee was appointed for regularity and correspondence ; and circular letters were sent to all the dignitaries of the Church, inviting them to join 25 with them in the protection of the national religion.

All this happened before Lord George Gordon was a member of, or the most distantly connected with it ; for it was not till November, 1779, that the London Association made him an offer of their chair, by a 30 unanimous resolution, communicated to him, unsought and unexpected, in a public letter, signed by the

secretary in the name of the whole body ; and from that day, to the day he was committed to the Tower, I will lead him by the hand in your view, that you may see there is no blame in him. Though all his behavior
5 was unreserved and public, and though watched by wicked men for purposes of vengeance, the Crown has totally failed in giving it such a context as can justify, in the mind of any reasonable man, the conclusion it seeks to establish.

10 This will fully appear hereafter ; but let us first attend to the evidence on the part of the Crown.¹²

The first witness to support this prosecution is William Hay—a bankrupt in fortune he acknowledges himself to be, and I am afraid he is a bankrupt
15 in conscience. Such a scene of impudent, ridiculous inconsistency would have utterly destroyed his credibility in the most trifling civil suit ; and I am, therefore, almost ashamed to remind you of his evidence, when I reflect that you will never suffer it to glance
20 across your minds on this solemn occasion.

This man, whom I may now, without offense or slander, point out to you as a dark Popish spy, who attended the meetings of the London Association to pervert their harmless purposes, conscious that the
25 discovery of his character would invalidate all his testimony, endeavored at first to conceal the activity of his zeal, by denying that he had seen any of the destructive scenes imputed to the Protestants. Yet,

¹² There can be no better text from which to study the handling of evidence than the pages of this speech which follow. In them a student will find nearly all, if not all, of the general rules for sifting and valuing evidence brilliantly illustrated.

almost in the same breath, it came out, by his own confession, that there was hardly a place, public or private, where Riot had erected her standard, in which he had not been ; nor a house, prison, or chapel that was destroyed, to the demolition of which he had not 5 been a witness. He was at Newgate, the Fleet, at Langdale's, and at Coleman Street ; at the Sardinian Ambassador's, and in Great Queen Street, Lincoln's Inn Fields. What took him to Coachmakers' Hall ? He went there, as he told us, to watch their proceedings, because he expected no good from them ; and to justify his prophecy of evil, he said, on his examination by the Crown, that, as early as December, he had heard some alarming republican language. What language did he remember ? " Why, that the Lord 15 Advocate of Scotland was called only Harry Dundas !" Finding this too ridiculous for so grave an occasion, he endeavored to put some words about the breach of the King's coronation oath ¹³ into the prisoner's mouth, as proceeding from himself ; which it is notorious he 20 read out of an old Scotch book, published near a century ago, on the abdication of King James the Second.

Attend to his cross-examination. He was *sure* he had seen Lord George Gordon at Greenwood's room 25 in January ; but when Mr. Kenyon, who knew Lord George had never been there, advised him to recollect himself, he desired to consult his notes. First, he is positively sure, from his memory, that he had seen him there ; then he says, he cannot trust his 30

¹³ " Hay swore that Lord Gordon had declared that the King had broken his coronation oath." — *Goodrich.*

memory without referring to his papers. On looking at them, they contradict him ; and he then confesses that he never saw Lord George Gordon at Greenwood's room in January, when his note was taken,
5 nor at any other time. But why did he take notes ? He said it was because he foresaw what would happen. How fortunate the Crown is, gentlemen, to have such friends to collect evidence by anticipation ! When did he begin to take notes ? He said, on the
10 21st of February, which was the *first* time he had been alarmed at what he had seen and heard, although, not a minute before, he had been reading a note taken at Greenwood's room in January, and had sworn that he had attended their meetings, from
15 apprehensions of consequences, as early as December.

Mr. Kenyon, who now saw him bewildered in a maze of falsehood, and suspecting his notes to have been a villainous fabrication to give the show of correctness to his evidence, attacked him with a shrewdness for which he was wholly unprepared. You remember the witness had said that he always took notes when he attended any meetings where he expected their deliberations might be attended with dangerous consequences. "Give me one instance,"
25 says Mr. Kenyon, "in the whole course of your life, where you ever took notes before." Poor Mr. Hay was thunder-struck ; the sweat ran down his face, and his countenance bespoke despair—not recollection : "Sir, I must have an instance ; tell me when
30 and where ?" Gentlemen, it was now too late ; *some* instance he was obliged to give, and, as it was evident to everybody that he had one still to choose, I think

he might have chosen a better. “*He had taken notes at the General Assembly of the Church of Scotland, six-and-twenty years before!*” What ! did he apprehend dangerous consequences from the deliberations of the grave elders of the Kirk ? Were they levying 5 war against the King ? At last, when he is called upon to say to whom he communicated the intelligence he had collected, the spy stood confessed indeed. At first he refused to tell, saying he was his friend, and that he was not obliged to give him up ; 10 and when forced at last to speak, it came out to be Mr. Butler, a gentleman universally known, and who, from what I know of him, I may be sure never employed him, or any other spy, because he is a man every way respectable, but who certainly is not only 15 a Papist, but the person who was employed in all their proceedings, to obtain the late indulgences from Parliament.¹⁴ He said Mr. Butler was his particular friend, yet professed himself ignorant of his religion. I am sure he could not be desired to conceal it. Mr. 20 Butler makes no secret of his religion. It is no reproach to any man who lives the life he does. But Mr. Hay thought it of moment to his own credit in the cause, that he himself might be thought a Protestant, unconnected with Papists, and not a Popish 25 spy.

So ambitious, indeed, was the miscreant of being useful in this odious character, through every stage of the cause, that, after staying a little in St. George’s Fields, he ran home to his own house in St. Dunstan’s 30

¹⁴ “Mr. Charles Butler, author of the *Reminiscences*.”—*Goodrich.*

church-yard, and got upon the leads, where he swore he saw *the very same man* carrying *the very same flag* he had seen in the fields. Gentlemen, whether the petitioners employed the same standard-man through 5 the whole course of their peaceable procession is certainly totally immaterial to the cause, but the circumstance is material to show the wickedness of the man. "How," says Mr. Kenyon, "do you know that it was the same person you saw in the fields? 10 Were you acquainted with him?" "No." "How then?" "Why, he looked liked a brewer's servant." *Like a brewer's servant!* "What, were they not all in their Sunday's clothes?" "Oh! yes, they were all in their Sunday's clothes." "Was the man with the 15 flag then alone in the dress of his trade?" "No." "Then how do you know he was a brewer's servant?" Poor Mr. Hay!—nothing but sweat and confusion again! At last, after a hesitation, which everybody thought would have ended in his running out of court, 20 he said, "he knew him to be a brewer's servant, because there was something particular in the cut of his coat, the cut of his breeches, and the cut of his stockings!"

You see, gentlemen, by what strange means villainy 25 is detected. Perhaps he might have escaped from me, but he sunk under that shrewdness and sagacity, which ability, without long habits, does not provide. Gentlemen, you will not, I am sure, forget, whenever you see a man about whose apparel there is anything particular, to set him down for a *brewer's servant*.

Mr. Hay afterward went to the lobby of the House of Commons. What took him there? He thought

himself in danger ; and therefore, says Mr. Kenyon, you thrust yourself voluntarily into the very centre of danger. That would not do. Then he had a particular friend, whom he knew to be in the lobby, and whom he apprehended to be in danger. “Sir, who was that particular friend ? Out with it. Give us his name instantly.” All in confusion again. Not a word to say for himself ; and the name of this person who had the honor of Mr. Hay’s friendship will probably remain a secret forever. 10

It may be asked, are these circumstances material ? and the answer is obvious : they are material ; because, when you see a witness running into every hole and corner of falsehood, and, as fast as he is made to bolt out of one, taking cover in another, you will never 15 give credit to what that man relates, as to any possible matter which is to affect the life or reputation of a fellow-citizen accused before you. God forbid that you should. I might, therefore, get rid of this wretch altogether without making a single remark on that 20 part of his testimony which bears upon the issue you are trying ; but the Crown shall have the full benefit of it all. I will defraud it of nothing he has said. Notwithstanding all his folly and wickedness, let us for the present take it to be true, and see what it 25 amounts to. What is it he states to have passed at Coachmakers’ Hall ? That Lord George Gordon desired the multitude to behave with unanimity and firmness, as the Scotch had done. Gentlemen, there is no manner of doubt that the Scotch behaved with 3 unanimity and firmness in resisting the relaxation of the penal laws against Papists, and that by that

unanimity and firmness they succeeded ;¹⁶ but it was by the *constitutional* unanimity and firmness of the great body of the people of Scotland whose example Lord George Gordon recommended, and not by the riots and burning which they attempted to prove had been committed in Edinburgh in 1778.

I will tell you myself, gentlemen, as one of the people of Scotland, that there then existed, and still exist, eighty-five societies of Protestants, who have been, and still are, uniformly firm in opposing every change in that system of laws established to secure the Revolution ; and Parliament gave way in Scotland to their united voice, and not to the fire-brands of the rabble. It is the duty of Parliament to listen to the voice of the people, for they are the servants of the people. And when the Constitution of church or state is believed, whether truly or falsely, to be in danger, I hope there never will be wanting men (notwithstanding the proceedings of to-day) to desire the people to persevere and be firm. Gentlemen, has the Crown proved that the Protestant brethren of the London Association fired the mass-houses in Scotland or acted in rebellious opposition to law, so as to entitle it to wrest the prisoner's expressions into an excitation of rebellion against the state, or of violence against the properties of English Papists, by setting up their firmness as an example ? Certainly not. They have not even proved the naked fact of such violences, though such proof would have called for no resist-

³⁰ ¹⁶ "The violent popular opposition manifested toward the proposed act extending the Roman Catholic Relief Bill to Scotland, caused it to be abandoned."—*Goodrich*.

ance ; since to make it bear as rebellious advice to the Protestant Association of London, it must have been first shown that such acts had been perpetrated or encouraged by the Protestant societies in the North.

Who has dared to say this ? No man. The rabble in Scotland certainly did that which has since been done by the rabble in England, to the disgrace and reproach of both countries. But in neither country was there found one man of character or condition, of ¹⁵ any description, who abetted such enormities, nor any man, high or low, of any of the Associated Protestants, here or there, who were either convicted, tried, or taken on suspicion.

As to what this man heard on the 29th of May, it ¹⁵ was nothing more than the proposition of going up in a body to St. George's Fields to consider how the petition should be presented, with the same exhortations to firmness as before. The resolution made on the motion has been read, and when I come to state the ²⁰ evidence on the part of my noble friend, I will show you the impossibility of supporting any criminal inference from what Mr. Hay afterward puts in his mouth in the lobby, even taking it to be true. I wish here to be accurate [looking on a card on which he had taken ²⁵ down his words]. He says : "Lord George desired them to continue steadfastly to adhere to so good a cause as theirs was ; promised to persevere in it himself, and hoped, though there was little expectation at present from the House of Commons, that they would ³⁰ meet with redress from their *mild and gracious Sovereign*, who, no doubt, would recommend it to his

ministers to repeal it." This was all he heard, and I will show you how this wicked man himself (if any belief is to be given to him) entirely overturns and brings to the ground the evidence of Mr. Bowen,¹⁶ on which the Crown rests singly for the proof of words which are more difficult to explain. Gentlemen, was this the language of rebellion? If a multitude were at the gates of the House of Commons to command and insist on a repeal of this law, why encourage their hopes by reminding them that they had a mild and gracious Sovereign? If war was levying against him, there was no occasion for his mildness and graciousness. If he had said, "Be firm and persevere, we shall meet with redress from the *prudence* of the Sovereign," it might have borne a different construction; because, whether he was gracious or severe, his prudence might lead him to submit to the necessity of the times. The words sworn to were, therefore, perfectly clear and unambiguous—"Persevere in your zeal and supplications, and you will meet with redress from a mild and gracious King, who will recommend it to his ministers to repeal it." Good God! if they were to wait till the King, whether from benevolence or fear, should direct his minister to influence the proceedings of Parliament, how does it square with the charge of instant coercion or intimidation of the House of Commons? If the multitude were assembled with the premeditated design of producing immediate repeal by terror or arms, is it possible to suppose that their leader would desire them to be quiet, and refer them to those qualities of the Prince, which, however emi-

¹⁶ "The Chaplain of the House of Commons."—*Goodrich.*

nently they might belong to him, never could be exerted on subjects in rebellion to his authority ? In what a labyrinth of nonsense and contradiction do men involve themselves, when, forsaking the rules of evidence, they would draw conclusions from words in contradiction to language and in defiance of common sense ! 5

The next witness that is called to you by the Crown is Mr. Metcalf. He was not in the lobby, but speaks only to the meeting in Coachmakers' Hall, 10 on the 29th of May, and in St. George's Fields. He says that at the former, Lord George reminded them that the Scotch had succeeded by their unanimity—and hoped that no one who had signed the petition would be ashamed or afraid to show himself in the 15 cause ; that he was ready to go to the gallows for it ; that he would not present the petition of a lukewarm people ; that he desired them to come to St. George's Fields, distinguished with blue cockades, and that they should be marshaled in four divisions. Then he 20 speaks to having seen them in the fields in the order which has been described ; and Lord George Gordon in a coach surrounded by a vast concourse of people, with blue ribbons, forming like soldiers, but was not near enough to hear whether the prisoner spoke to 25 them or not. Such is Mr. Metcalf's evidence ; and after the attention you have honored me with, and which I shall have occasion so often to ask again on the same subject, I shall trouble you with but one observation, namely, that it cannot, without absurdity, 30 be supposed that if the assembly at Coachmakers' Hall had been such conspirators as they are represented,

their doors would have been open to strangers, like this witness, to come in to report their proceedings.

The next witness is Mr. Anstruther,¹⁷ who speaks to the language and deportment of the noble prisoner, 5 both at Coachmakers' Hall, on the 29th of May, and afterward on the 2d of June, in the lobby of the House of Commons. It will be granted to me, I am sure, even by the advocates of the Crown, that this gentleman, not only from the clearness and consistency of his testimony, but from his rank and character in the world, is infinitely more worthy of credit than Mr. Hay, who went before him. And from the circumstances of irritation and confusion under which the Rev. Mr. Bowen confessed himself to have heard 15 and seen, what he told you he heard and saw, I may likewise assert, without any offense to the reverend gentleman, and without drawing any parallel between their credits, that where their accounts of this transaction differ, the preference is due to the former. 20 Mr. Anstruther very properly prefaced his evidence with this declaration : "I do not mean to speak accurately to words ; it is impossible to recollect them at this distance of time." I believe I have used his very expression, and such expression it well became 25 him to use in a *case of blood*. But words, even if they could be accurately remembered, are to be admitted with great reserve and caution, when the purpose of the speaker is to be measured by them. They are transient and fleeting ; frequently the effect of a sudden transport, easily misunderstood, and often unconsciously misrepresented. It may be the fate of the 30

¹⁷ "This gentleman was a member of Parliament."—*Goodrich.*

most innocent language to appear ambiguous, or even malignant, when related in mutilated, detached passages, by people to whom it is not addressed, and who know nothing of the previous design either of the speaker or of those to whom he spoke. Mr. 5 Anstruther says that he heard Lord George Gordon desire the petitioners to meet him on the Friday following, in St. George's Fields, and that if there were fewer than twenty thousand people, he would not present the petition, as it would not be of consequence 10 enough ; and that he recommended to them the example of the Scotch, who, by their firmness, had carried their point.

Gentlemen, I have already admitted that they did by firmness carry it. But has Mr. Anstruther at- 15 tempted to state any one expression that fell from the prisoner to justify the positive, unerring conclusion, or even the presumption, that the firmness of the Scotch Protestants, by which the point was carried in Scotland, was the resistance and riots of the rabble ? 20 No, gentlemen ; he simply states the words, as he heard them in the hall on the 29th, and all that he afterward speaks to in the lobby, repels so harsh and dangerous a construction. The words sworn to at Coachmakers' Hall are, "that he recommended tem- 25 perance and firmness." Gentlemen, if his motives are to be judged by words, for Heaven's sake let these words carry their popular meaning in language. Is it to be presumed, without proof, that a man means *one* thing because he says *another* ? Does the exhortation to temperance and firmness apply most naturally to the constitutional resistance of the Protestants 30

of Scotland, or to the outrages of ruffians who pulled down the houses of their neighbors? Is it possible, with decency, to say, in a court of justice, that the recommendation of temperance is the excitation to villainy and frenzy? But the words, it seems, are to be construed, not from their own signification, but from that which follows them, viz., "by that the Scotch carried their point." Gentlemen, is it in evidence before you that by rebellion the Scotch carried to their point? or that the indulgences to Papists were not extended to Scotland because the rabble had opposed their extension? Has the Crown authorized either the court or its law servants to tell you so? Or can it be decently maintained that Parliament was so weak or infamous as to yield to a wretched mob of vagabonds at Edinburgh what it has since refused to the earnest prayers of a hundred thousand Protestants of London? No, gentlemen of the jury, Parliament was not, I hope, so abandoned. But the ministers knew that the Protestants of Scotland were to a man abhorrent of that law. And though they never held out resistance, if government should be disposed to cram it down their throats by force, yet such violence to the united sentiments of a whole people appeared to be a measure so obnoxious, so dangerous, and withal so unreasonable, that it was wisely and judiciously dropped, to satisfy the general wishes of the nation, and not to avert the vengeance of those low incendiaries whose misdeeds have rather been talked of than proved.

Thus, gentlemen, the exculpation of Lord George's conduct on the 29th of May is sufficiently established

by the very evidence on which the Crown asks you to convict him. For, in recommending *temperance and firmness after the example of Scotland*, you cannot be justified in pronouncing that he meant more than the firmness of the grave and respectable people in that 5 country, to whose constitutional firmness the Legislature had before acceded, instead of branding it with the title of rebellion ; and who, in my mind, deserve thanks from the King for temperately and firmly resisting every innovation which they conceived to be 10 dangerous to the national religion, independently of which his Majesty (without a new limitation by Parliament) has no more title to the crown than I have.

Such, gentlemen, is the whole amount of all my noble friend's previous communication with the petitioners, whom he afterward assembled to consider how their petition should be presented. This is all, not only that men of credit can tell you on the part of the prosecution, but all that even the worst vagabond who ever appeared in a court—the very scum of the 20 earth—thought himself safe in saying, upon oath, on the present occasion. Indeed, gentlemen, when I consider my noble friend's situation, his open, unreserved temper, and his warm and animated zeal for a cause which rendered him obnoxious to so many 25 wicked men—speaking daily and publicly to mixed multitudes of friends and foes, on a subject which affected his passions—I confess I am astonished that no other expressions than those in evidence before you have found their way into this court. That they 30 have not found their way is surely a most satisfactory proof that there was nothing in his heart which even

youthful zeal could magnify into guilt, or that want of caution could betray.

Gentlemen, Mr. Anstruther's evidence, when he speaks of the lobby of the House of Commons, is very much to be attended to. He says, "I saw Lord George leaning over the gallery," which position, joined with what he mentioned of his talking with the chaplain, marks the time and casts a strong doubt on Bowen's testimony, which you will find stands, in this only material part of it, single and unsupported. "I then heard him," continues Mr. Anstruther, "tell them they had been called a mob in the House, and that peace-officers had been sent to disperse them (peaceable petitioners); but that by steadiness and firmness they might carry their point; as he had no doubt his Majesty, who was a gracious prince, would send to his ministers to repeal the act, when he heard his subjects were coming up for miles round, and wishing its repeal." How coming up? In rebellion and arms to compel it? No! all is still put on the *graciousness* of the Sovereign, in listening to the unanimous wishes of his people. If the multitude then assembled had been brought together to intimidate the House by their firmness, or to coerce it by their numbers, it was ridiculous to look forward to the King's influence over it, when the collection of future multitudes should induce him to employ it. The expressions were therefore quite unambiguous; nor could malice itself have suggested another construction of them, were it not for the fact that the House was at that time surrounded, not by the petitioners whom the noble prisoner had assembled, but by a

mob who had mixed with them, and who, therefore, when addressed by him, were instantly set down as his followers. He thought he was addressing the sober members of the association, who by steadiness and perseverance could understand nothing more 5 than perseverance in that conduct he had antecedently prescribed, as steadiness signifies a uniformity, not a change of conduct ; and I defy the Crown to find out a single expression, from the day he took the chair at the association to the day I am speaking of, that justifies any other construction of steadiness and firmness than that which I put upon it before.

What would be the feelings of our venerable ancestors, who framed the statue of treasons to prevent their children being drawn into the snares of death, unless 15 *provably* convicted by overt acts, if they could hear us disputing whether it was treason to desire harmless, unarmed men to be firm and of good heart, and to trust to the graciousness of their King ?

Here Mr. Anstruther closes his evidence, which 20 leads me to Mr. Bowen, who is the only man—I beseech you, gentlemen of the jury, to attend to this circumstance—Mr. Bowen is the only man who has attempted, directly or indirectly, to say that Lord George Gordon uttered a syllable to the multitude in 25 the lobby concerning the destruction of the mass-houses in Scotland. Not one of the Crown's witnesses ; not even the wretched, abandoned Hay, who was kept, as he said, in the lobby the whole afternoon, from anxiety for his pretended friend, has ever 30 glanced at any expression resembling it. They all finish with the expectation which he held out, from a

mild and gracious Sovereign. Mr. Bowen alone goes on further, and speaks of the successful riots of the Scotch. But he speaks of them in such a manner, as, so far from conveying the hostile idea, which he seemed sufficiently desirous to convey, tends directly to wipe off the dark hints and insinuations which have been made to supply the place of proof upon that subject—a subject which should not have been touched on without the fullest support of evidence, and where nothing but the most unequivocal evidence ought to have been received. He says, “his Lordship began by bidding them be quiet, peaceable, and steady”—not “*steady*” alone; though, if that had been the expression, singly by itself, I should not be afraid to meet it; but, “*Be quiet, PEACEABLE, and steady.*” Gentlemen, I am indifferent what other expressions of dubious interpretation are mixed with these. For you are trying whether my noble friend came to the House of Commons with a decidedly hostile mind; and as I shall, on the recapitulation of our own evidence, trace him in your view, without spot or stain, down to the very moment when the imputed words were spoken, you will hardly forsake the whole innocent context of his behavior, and torture your inventions to collect the blackest system of guilt, starting up in a moment, without being previously concerted, or afterward carried into execution.

First, what are the words by which you are to be convinced that the Legislature was to be frightened into compliance, and to be coerced if terror should fail? “*Be quiet, peaceable, and steady; you are a good people; yours is a good cause: his Majesty is a*

gracious monarch, and when he hears that all his people, ten miles round, are collecting, he will send to his ministers to repeal the act." By what rules of construction can such an address to unarmed, defenseless men be tortured into treasonable guilt? It is 5 impossible to do it without pronouncing even in the total absence of all proof of fraud or deceit in the speaker, that *quiet* signifies *tumult and uproar*, and that *peace* signifies *war and rebellion*.

I have before observed that it was most important 10 for you to remember that, with this exhortation to quiet and confidence in the King, the evidence of all the other witnesses closed. Even Mr. Anstruther, who was a long time afterward in the lobby, heard nothing further; so that if Mr. Bowen had been out 15 of the case altogether, what would the amount have been? Why, simply, that Lord George Gordon, having assembled an unarmed, inoffensive multitude in St. George's Fields, to present a petition to Parliament, and finding them becoming tumultuous, to the 20 discontent of Parliament and the discredit of the cause, desired them not to give it up, but to continue to show their zeal for the legal object in which they were engaged; to manifest that zeal *quietly and peaceably*, and not to despair of success; since, though the 25 House was not disposed to listen to it, they had a gracious Sovereign, who would second the wishes of his people. This is the sum and substance of the whole. They were not, even by any one ambiguous expression, encouraged to trust to their numbers, as 30 sufficient to overawe the House, or to their strength to compel it, or to the prudence of the state in yield-

ing to necessity, but to the indulgence of the King, in compliance with the wishes of his people. Mr. Bowen, however, thinks proper to proceed ; and I beg that you will attend to the sequel of his evidence. He stands single in all the rest that he says, which might entitle me to ask you absolutely to reject it. But I have no objection to your believing every word of it, *if you can* : because, if inconsistencies prove anything, they prove that there was nothing of that ⁵ liberation in the prisoner's expressions which can justify the inference of guilt. I mean to be correct as to his words [looking at his words which he had noted down]. He says "that Lord George told the people that an attempt had been made to introduce ¹⁰ the bill into Scotland, and that they had no redress till the mass-houses were pulled down. That Lord Weymouth¹⁸ then sent official assurances that it should not be extended to them." Gentlemen, why is Mr. Bowen called by the Crown to tell you this? ¹⁵ The reason is plain : because the Crown, conscious that it could make no case of treason from the rest of the evidence, in sober judgment of law ; aware that it had proved no purpose or act of force against the House of Commons, to give countenance to the accusation, much less to warrant a conviction, found it necessary to hold up the noble prisoner as the wicked and cruel author of all those calamities in which every man's passions might be supposed to come in to assist his judgment to decide. They therefore made him speak in enigmas to the multitude : not telling them ²⁰ to do mischief in order to succeed, but that by mischief in Scotland success had been obtained. ²⁵

¹⁸ "Then Secretary for the Southern Department."—Goodrich.

But were the mischiefs themselves that did happen here of a sort to support such a conclusion? Can any man living, for instance, believe that Lord George Gordon could possibly have excited the mob to destroy the house of that great and venerable magistrate, who has presided so long in this high tribunal that the oldest of us do not remember him with any other impression than the awful form and figure of justice : a magistrate who had always been the friend of the Protestant Dissenters against the ill-timed jealousies of the Establishment—his countryman, too, —and, without adverting to the partiality not unjustly imputed to men of that country, a man of whom any country might be proud? No, gentlemen, it is not credible that a man of noble birth and liberal education (unless agitated by the most implacable personal resentment, which is not imputed to the prisoner) could possibly consent to the burning of the house of Lord Mansfield.¹⁹

If Mr. Bowen, therefore, had ended here, I can hardly conceive such a construction could be decently hazarded consistent with the testimony of the witnesses we have called. How much less, when, after the dark insinuations which such expressions might otherwise have been argued to convey, the very same person, on whose veracity or memory they are only to

¹⁹ “ This reference to Lord Mansfield, then seated on the bench as presiding judge at the age of seventy-six, is not only appropriate and beautiful in itself, but, as managed by Mr. Erskine, forms a most convincing proof in favor of Lord George Gordon. This was one of Mr. Erskine’s excellencies that he never went out of his case for an illustration or a picture which refreshed the mind, but he brought back with him an *argument*. ”—*Goodrich*.

be believed, and who must be credited or discredited *in toto*, takes out the sting himself by giving them such an immediate context and conclusion as renders the proposition ridiculous, which his evidence is brought forward to establish; for he says that Lord George Gordon instantly afterward addressed himself thus: "Beware of evil-minded persons who may mix among you and do mischief, the blame of which will be imputed to you."

10 Gentlemen, if you reflect on the slander which I told you fell upon the Protestants in Scotland by the acts of the rabble there, I am sure you will see the words are capable of an easy explanation. But as Mr. Bowen concluded with telling you that he heard
15 them in the midst of noise and confusion, and as I can only take them from *him*, I shall not make an attempt to collect them into one consistent discourse, so as to give them a decided meaning in favor of my client, because I have repeatedly told you that words imper-
20 fectly heard and partially related cannot be so reconciled. But this I will say—that he must be a ruffian, and not a lawyer, who would dare to tell an English jury that such ambiguous words, hemmed closely in between others not only innocent but meritorious, are
25 to be adopted to constitute guilt, by rejecting both introduction and sequel, with which they are absolutely irreconcilable and inconsistent: for if ambiguous words, when coupled with actions, decipher the mind of the actor, so as to establish the presumption of
30 guilt, will not such as are plainly innocent and unambiguous go as far to repel such presumption? Is innocence more difficult of proof than the most malig-

nant wickedness? Gentlemen, I see your minds revolt at such shocking propositions. I beseech you to forgive me. I am afraid that my zeal has led me to offer observations which I ought in justice to have believed every honest mind would suggest to itself 5 with pain and abhorrence without being illustrated and enforced.

I now come more minutely to the evidence on the part of the prisoner.

I before told you that it was not till November, 10 1779, when the Protestant Association was already fully established, that Lord George Gordon was elected President by the unanimous voice of the whole body, unlooked for and unsolicited. It is surely not an immaterial circumstance that at the very first meeting 15 where his Lordship presided, a dutiful and respectful petition, the same which was afterward presented to Parliament, was read and approved of; a petition which, so far from containing anything threatening or offensive, conveyed not a very oblique reflection upon 20 the behavior of the people in Scotland. It states, that as England and that country were now one, and as official assurances had been given that the law should not pass there, they hoped the *peaceable* and *constitutional deportment* of the English Protestants would 25 entitle them to the approbation of Parliament.

It appears by the evidence of Mr. Erasmus Middleton,²⁰ a very respectable clergyman, and one of the committee of the Association, that a meeting had been held on the 4th of May, at which Lord George was 30 not present; that at that meeting a motion had

²⁰ "The first witness called for the prisoner."—*Goodrich.*

been made for going up with the petition in a body, but which, not being regularly put from the chair, no resolution was come to upon it ; and that it was likewise agreed on, but in the same irregular manner, that
5 there should be no other public meeting previous to the presenting the petition. That this last resolution occasioned great discontent, and that Lord George was applied to by a large and respectable number of the Association to call another meeting to consider of
10 the most prudent and respectful method of presenting their petition : but it appears that, before he complied with their request, he consulted with the committee on the propriety of compliance, who all agreeing to it except the Secretary, his Lordship advertised the
15 meeting which was afterward held on the 29th of May. The meeting was, therefore, the act of the *whole* Association. As to the original difference between my noble friend and the committee on the expediency of the measure, it is totally immaterial ; since Mr. Mid-
20 dleton, who was one of the number who differed from him on that subject (and whose evidence is, therefore, infinitely more to be relied on), told you that his whole deportment was so clear and unequivocal, as to entitle him to assure you on his most solemn oath, that he in
25 his conscience believed his views were perfectly constitutional and pure. This most respectable clergyman further swears that he attended all the previous meetings of the society, from the day the prisoner became President to the day in question ; and that, knowing
30 they were objects of much jealousy and malice, he watched his behavior with anxiety, lest his zeal should furnish matter for misrepresentation ; but that he

never heard an expression escape him which marked a disposition to violate the duty and subordination of a subject, or which could lead any man to believe that his objects were different from the avowed and legal objects of the Association. We could have examined 5 thousands to the same fact, for, as I told you when I began to speak, I was obliged to leave my place to disencumber myself from their names.

This evidence of Mr. Middleton's as to the 29th of May, must, I should think, convince every man how 10 dangerous and unjust it is in witnesses, however perfect their memories, or however great their veracity, to come into a criminal court where a man is standing for his life or death, retailing scraps of sentences which they had heard by thrusting themselves, from 15 curiosity, into places where their business did not lead them; ignorant of the views and tempers of both speakers and hearers, attending only to a part, and, perhaps innocently, misrepresenting that part, from not having heard the whole. 20

The witnesses for the Crown all tell you that Lord George said he would not go up with the petition unless he was attended by twenty thousand people who had signed it. There they think proper to stop, as if he had said nothing further; leaving you to say to 25 yourselves, what possible purpose could he have in assembling such a multitude on the very day the House was to receive the petition? Why should he urge it, when the committee had before thought it inexpedient? And why should he refuse to present it 30 unless so attended? Hear what Mr. Middleton says. He tells you that my noble friend informed the peti-

tioners that if it was decided they were *not* to attend to consider how their petition should be presented, he would with the greatest pleasure go up with it *alone*. But that, if it was resolved they should attend it in person, he expected twenty thousand at the least should meet him in St. George's Fields, for that otherwise the petition would be considered as a forgery ; it having been thrown out in the House and elsewhere that the repeal of the bill was not the serious wish of the people at large, and that the petition was a mere list of names on parchment, and not of men in sentiment. Mr. Middleton added, that Lord George adverted to the same objections having been made to many other petitions, and he, therefore, expressed an anxiety to show Parliament how many were actually interested in its success, which he reasonably thought would be a strong inducement to the House to listen to it. The language imputed to him falls in most naturally with this purpose : “ I wish Parliament to see who and what you are ; dress yourselves in your best clothes ”—which Mr. Hay (who, I suppose, had been reading the indictment) thought it would be better to call “ ARRAY YOURSELVES.” He desired that not a stick should be seen among them, and that, if any man insulted another, or was guilty of any breach of the peace, he was to be given up to the magistrates. Mr. Attorney-General, to persuade you that this was all color and deceit, says, “ How was a magistrate to face forty thousand men ? How were offenders in such a multitude to be amenable to the civil power ? ” What a shameful perversion of a plain, peaceable purpose ! To be sure, if the multitude had been assem-

bled to resist the magistrate, offenders could not be secured. But they themselves were ordered to apprehend all offenders among them, and to deliver them up to justice. They themselves were to surrender their fellows to civil authority if they offended. 5

But it seems that Lord George ought to have foreseen that so great a multitude could not be collected without mischief.²¹ Gentlemen, we are not trying whether he might or ought to have foreseen mischief, but whether he wickedly and traitorously *preconcerted* 10 and *designed* it. But if *he* be an object of censure for not foreseeing it, what shall we say to GOVERNMENT, that took no steps to prevent it, that issued no proclamation, warning the people of the danger and illegality of such an assembly? If a peaceable multitude, with 15 a petition in their hands, be an army, and if the noise and confusion inseparable from numbers, though without violence or the purpose of violence, constitute war, what shall be said of that GOVERNMENT which remained from Tuesday to Friday, knowing that an 20 army was collecting to levy war by public advertisement, yet had not a single soldier, no, nor even a constable, to protect the state?

Gentlemen, I come forth to do that for government which its own servant, the Attorney-General, has not 25 done. I come forth to rescue it from the eternal infamy which would fall upon its head, if the language of its own advocate were to be believed. But government has an unanswerable defense. It neither

²¹ This paragraph shows well two characteristics of this speech : 30 the frankness with which Lord Erskine stated an objection, and the skill with which he turned it against his opponents.

did nor could possibly enter into the head of any man in authority to prophesy—human wisdom could not divine—that wicked and desperate men, taking advantage of the occasion which, perhaps, an imprudent 5 zeal for religion had produced, would dishonor the cause of all religions, by the disgraceful acts which followed.

Why, then, is it to be said that Lord George Gordon is a traitor, who, without proof of any hostile 10 purpose to the government of his country, only did not foresee *what nobody else foresaw*—what those people whose business it is to foresee every danger that threatens the state, and to avert it by the interference of magistracy, though they could not but read the ad- 15 vertisement, neither did nor could possibly apprehend?²²

How are these observations attempted to be answered? Only by asserting, without evidence or even reasonable argument, that all this was color and 20 deceit. Gentlemen, I again say that it is scandalous and reproachful, and not to be justified by any duty which can possibly belong to an advocate at the bar of an English court of justice, to declare, without any proof or attempt at proof, that all a man's expres- 25 sions, however peaceable, however quiet, however constitutional, however loyal, are all fraud and villainy. Look, gentlemen, to the issues of life, which I before called the evidence of Heaven: I call them so still. Truly may I call them so, when, out of a book com-

30 ²² " This was the great turning-point of the case, and it would have been impossible to state it in more simple or more powerful terms."—*Goodrich.*

piled by the Crown from the petition in the House of Commons, and containing the names of all who signed it, and which was printed in order to prevent any of that number being summoned upon the jury to try this indictment, *not one criminal, or even a suspected name is 5 to be found, among this defamed host of petitioners!*

After this, gentlemen, I think the Crown ought, in decency, to be silent. I see the effect this circumstance has upon you, and I know I am warranted in my assertion of the fact. If I am not, why did not 10 the Attorney-General produce the record of some convictions, and compare it with the list? I thank them, therefore, for the precious compilation, which, though they did not produce, they cannot stand up and deny. 15

Solomon [Job] says, “Oh that mine adversary had written a book!” My adversary *has* written a book, and out of it I am entitled to pronounce that it cannot again be decently asserted that Lord George Gordon, in exhorting an innocent and unimpeached 20 multitude to be peaceable and quiet, was exciting them to violence against the state.

What is the evidence, then, on which this connection with the mob is to be proved? *Only that they had blue cockades.*²³ Are you or am I answerable for 25 every man who wears a blue cockade? If a man commits murder in my livery or in yours, without command, counsel, or consent, is the murder ours? In all *cumulative, constructive* treasons, you are to

²³ “The members of the Association, at the meeting of St. 30 George’s Fields, were distinguished by wearing cockades, on which were inscribed the words ‘No Popery’!”—*Goodrich.*

judge from the tenor of a man's behavior, not from crooked and disjointed parts of it. "Nemo repente fuit turpissimus." No man can possibly be guilty of *this* crime by a sudden impulse of the mind, as he
5 may of some others ; and, certainly, Lord George Gordon stands upon the evidence at Coachmakers' Hall as pure and white as snow. He stands so upon the evidence of a man who had differed with him as to the expediency of his conduct, yet who swears
10 that from the time he took the chair till the period which is the subject of inquiry, there was no blame in him.

You, therefore, are bound as Christian men to believe that, when he came to St. George's Fields that
15 morning, he did not come there with the hostile purpose of repealing a law by rebellion.

But still it seems all his behavior at Coachmakers' Hall was color and deceit. Let us see, therefore, whether this body of men, when assembled, answered
20 the description of that which I have stated to be the purpose of him who assembled them. Were they a multitude arrayed for terror or force ? On the contrary, you have heard, upon the evidence of men whose veracity is not to be impeached, that they were sober,
25 decent, quiet, peaceable tradesmen ; that they were all of the better sort ; all well-dressed and well-behaved ; and that there was not a man among them who had any one weapon, offensive or defensive. Sir Philip Jennings Clerke²⁴ tells you he went into the

30 ²⁴ " This gentleman, in giving evidence on behalf of the prisoner, deposed to the peaceable behavior of the members of the Association who formed the original procession to carry up the

Fields ; that he drove through them, talked to many individuals among them, who all told him that it was not their wish to persecute the Papists, but that they were alarmed at the progress of their religion from their schools. Sir Philip further told you that he never 5 saw a more peaceable multitude in his life ; and it appears upon the oaths of all who were present,²⁶ that Lord George Gordon went round among them, desiring peace and quietness.

Mark his conduct, when he heard from Mr. Evans²⁶ 10 that a low, riotous set of people were assembled in Palace Yard. Mr. Evans, being a member of the Protestant Association, and being desirous that nothing bad might happen from the assembly, went in his carriage with Mr. Spinage to St. George's Fields, to 15 inform Lord George that there were such people assembled (probably Papists), who were determined to do mischief. The moment he told him of what he

petition, and whom he distinguished from the mob which afterward assembled tumultuously about the House of Commons."— 20 *Goodrich.*

²⁵ "Sir James Lowther, another of the prisoner's witnesses, proved that Lord George Gordon and Sir Philip Jennings Clerke accompanied him in his carriage from the House, and the former entreated the multitudes collected to disperse quietly to their 25 homes."— *Goodrich.*

²⁶ "A surgeon, who also was examined for the defense, and deposed that he saw Lord George Gordon in the midst of one of the companies in St. George's Fields, and that it appeared his wish at that time, from his conduct and expressions, that, to prevent all 30 disorder, he should not be attended by the multitude across Westminster Bridge. This gentleman's evidence was confirmed by that of other witnesses."— *Goodrich.*

heard, whatever his original plan might have been, he instantly changed it on seeing the impropriety of it. "Do you intend," said Mr. Evans, "to carry up all these men with the petition to the House of Commons?" "Oh no! no! not by any means; I do not mean to carry them all up." "Will you give me leave," said Mr. Evans, "to go round to the different divisions, and tell the people it is not your Lordship's purpose?" He answered, "By all means." And so Mr. Evans accordingly went, but it was impossible to guide such a number of people, peaceable as they were. They were all desirous to go forward; and Lord George was at last obliged to leave the Fields, exhausted with heat and fatigue, beseeching them to be peaceable and quiet. Mrs. Whittingham set him down at the House of Commons; and at the very time that he thus left them in perfect harmony and good order, it appears, by the evidence of Sir Philip Jennings Clerke, that Palace Yard was in an uproar, filled with mischievous boys and the lowest dregs of the people.

Gentlemen, I have all along told you that the Crown was aware that it had no case of treason, without connecting the noble prisoner with consequences, which it was in some luck to find advocates to state, without proof to support it. I can only speak for myself, that, small as my chance is (as times go) of ever arriving at high office, I would not accept of it on the terms of being obliged to produce against a fellow-citizen that which I have been witness to this day. For Mr. Attorney-General perfectly well knew the innocent and laudable motive with which the *protection* was

given, that he exhibited as an evidence of guilt;²⁷ yet it was produced to insinuate that Lord George Gordon, knowing himself to be the ruler of those villains, set himself up as a savior from their fury. We called Lord Stormont to explain this matter to you, who told you that Lord George Gordon came to Buckingham House, and begged to see the King, saying, he might be of great use in quelling the riots; and can there be on earth a greater proof of conscious innocence? For if he had been the wicked mover of them, would he have gone to the King to have confessed it, by offering to recall his followers from the mischiefs he had provoked? No! But since, notwithstanding a public protest issued by himself and the Association, reviling the authors of mischief, the Protestant cause was still made the pretext, he thought his public exertions might be useful, as they might tend to remove the prejudices which wicked men had diffused. The King thought so likewise, and therefore (as appears by Lord Stormont) refused to see Lord George till he had given the test of his loyalty by such exertions. But sure I am, our gracious Sovereign meant no trap for innocence, nor ever recommended it as such to his servants.

²⁷ "A witness of the name of Richard Pond, called in support of the prosecution, had sworn that, hearing his house was about to be pulled down, he applied to the prisoner for protection, and in consequence received the following document signed by him: 'All true friends to Protestants, I hope, will be particular, and do no injury to the property of any true Protestant, as I am well assured the proprietor of this house is a staunch and worthy friend to the cause. G. GORDON.'"—*Goodrich.*

Lord George's language was simply this: "The multitude pretend to be perpetrating these acts, under the authority of the Protestant petition; I assure your Majesty they are not the Protestant Association,
5 and I shall be glad to be of any service in suppressing them." I say BY GOD, that man is a ruffian who shall, after this, presume to build upon such honest, artless conduct, as an evidence of guilt.²⁸ Gentlemen, if Lord George Gordon had been guilty of high treason (as is assumed to-day) in the face of the whole Parliament, how are all its members to defend themselves from the misprision²⁹ of suffering such a person to go at large and to approach his sovereign?
15 The man who conceals the perpetration of treason is himself a traitor; but they are all perfectly safe, for nobody thought of treason till fears arising from another quarter bewildered their senses. The King,

²⁸ "The effect produced on the jury and spectators by this sudden burst of feeling, is represented by eye-witnesses to have been
20 such as to baffle all powers of description. It was wholly unpremeditated, the instantaneous result of that sympathy which exists between a successful speaker and his audience. In uttering this appeal to his Maker, Mr. Erskine's tone was one of awe and deep reverence, without the slightest approach toward the profane use
25 of the words, but giving them all the solemnity of a judicial oath. The magic of his eye, gesture, and countenance beaming with emotion, completed the impression, and made it irresistible. It was a thing which a man could do but once in his life. Mr. Erskine attempted it again in the House of Commons, and utterly
30 failed."—*Goodrich.*

²⁹ "Misprision of treason consists in the bare knowledge and concealment of treason, without any degree of assent thereto, for any assent makes the party a principal traitor."—"Blackstone's Comm." iv. 129, I.—*Goodrich.*

therefore, and his servants, very wisely accepted his promise of assistance, and he flew with honest zeal to fulfill it. Sir Philip Jennings Clerke tells you that he made use of every expression which it was possible for a man in such circumstances to employ. He begged 5 them, for God's sake, to disperse and go home; declared his hope that the petition would be granted, but that rioting was not the way to effect it. Sir Philip said he felt himself bound, without being particularly asked, to say everything he could in protection of an injured and innocent man, and repeated again, that there was not an art which the prisoner could possibly make use of, that he did not zealously employ; but that it was all in vain. "I began," says he, "to tremble for myself, when Lord George read 15 the resolution of the House, which was hostile to them, and said their petition would not be taken into consideration until they were quiet." But did he say, "therefore go on to burn and destroy"? On the contrary, he helped to pen that motion, and read it to the 20 multitude, as one which he himself had approved. After this he went into the coach with Sheriff Pugh, in the city; and there it was, in the presence of the very magistrate whom he was assisting to keep the peace, that he *publicly* signed the protection which has 25 been read in evidence against him; although Mr. Fisher, who now stands in my presence, confessed in the Privy Council that he himself had granted similar protections to various people—*yet he was dismissed as having done nothing but his duty.*

This is the plain and simple truth; and for his just 30 obedience to his Majesty's request, do the King's serv-

ants come to-day into his court, where he is supposed in person to sit, to turn that obedience into the crime of high treason, and to ask you to put him to death for it.

5 Gentlemen, you have now heard, upon the solemn oaths of honest, disinterested men, a faithful history of the conduct of Lord George Gordon, from the day that he became a member of the Protestant Association to the day that he was committed a prisoner to the Tower. And I have no doubt, from the attention with which I have been honored from the beginning, that you have still kept in your minds the principles to which I entreated you would apply it, and that you have measured it by that standard. You have, therefore, 15 only to look back to the whole of it together ; to reflect on all you have heard concerning him ; to trace him in your recollection through every part of the transaction ; and, considering it with one manly, liberal view, to ask your own honest hearts, whether you can say that this noble and unfortunate youth is a wicked and deliberate traitor, who deserves by your verdict to suffer a shameful and ignominious death, which will stain the ancient honors of his house forever.

The crime which the Crown would have fixed upon 25 him is, that he assembled the Protestant Association round the House of Commons, not merely to influence and persuade Parliament by the earnestness of their supplications, but actually to coerce it by hostile, rebellious force ; that, finding himself disappointed 30 in the success of that coercion, he afterward incited his followers to abolish the legal indulgences to Papists, which the object of the petition was to repeal,

by the burning of their houses of worship, and the destruction of their property, which ended, at last, in a general attack on the property of all orders of men, religious and civil, on the public treasures of the nation, and on the very being of the government.³⁰

5

To support a charge of so atrocious and unnatural a complexion, the laws of the most arbitrary nations would require the most incontrovertible proof. Either the villain must have been taken in the overt act of wickedness, or, if he worked in secret upon others,¹⁰ his guilt must have been brought out by the discovery of a conspiracy, or by the consistent tenor of criminality. The very worst inquisitor that ever dealt in blood would vindicate the torture, by plausibility at least, and by the semblance of truth.

15

What evidence, then, will a jury of Englishmen expect from the servants of the Crown of England, before they deliver up a brother accused before them to ignominy and death? What proof will their consciences require? What will their plain and manly understandings accept of? What does the immemorial custom of their fathers, and the written law of this land, warrant them in demanding? Nothing less, in any case of blood, than the clearest and most unequivocal conviction of guilt. But in this case the Act has not even²⁵ trusted to the humanity and justice of our general law, but has said, in plain, rough, expressive terms—*probably*; that is, says Lord Coke, *not upon conjectural pre-*

³⁰ “At the time of the interference of the military, the mob had attacked the Pay Office, and were attempting to break into the Bank; and to aid the work of the incendiaries, a large party had been sent to cut the pipes of the New River.”

sumptions, or inferences, or strains of wit, but upon direct and plain proof. "For the King, Lords, and Commons," continues that great lawyer, "did not use the word *probably*, for then a common argument might 5 have served, but *proably*, which signifies the highest force of demonstration." And what evidence, gentlemen of the jury, does the Crown offer to you in compliance with these sound and sacred doctrines of justice? A few broken, interrupted, disjointed words, 10 without context or connection—uttered by the speaker in agitation and heat—heard, by those who relate them to you, in the midst of tumult and confusion—and even those words, mutilated as they are, in direct opposition to, and inconsistent with repeated and 15 earnest declarations delivered at the very same time and on the very same occasion, related to you by a much greater number of persons, and absolutely incompatible with the whole tenor of his conduct. Which of us all, gentlemen, would be safe, standing at 20 the bar of God or man, if we were not to be judged by the regular current of our lives and conversations, but by detached and unguarded expressions, picked out by malice, and recorded, without context or circumstances, against us? Yet such is the only evidence 25 on which the Crown asks you to dip your hands, and to stain your consciences, in the innocent blood of the noble and unfortunate youth who stands before you —on the single evidence of the words you have heard from their witnesses (for of what but words have you 30 heard?), which, even if they had stood uncontroverted by the proofs that have swallowed them up, or unexplained by circumstances which destroy their malignity?

nity, could not, at the very worst, amount in law to more than a breach of the Act against tumultuous petitioning (if such an act still exists); since the worst malice of his enemies has not been able to bring up one single witness to say that he ever *directed*, 5 *countenanced*, or *approved* rebellious force against the Legislature of this country. It is, therefore, a matter of astonishment to me that *men can keep the natural color in their cheeks* when they ask for human life, even on the Crown's original case, though the prisoner 10 had made no defense.

But will they still continue to ask for it after what they have heard? I will just remind the Solicitor-General, before he begins his reply, what matter he has to encounter. He has to encounter this: that 15 the going up in a body was not even originated by Lord George, but by others in his absence—that when proposed by him officially as chairman, it was adopted by the *whole* Association, and consequently was *their* act as much as his—that it was adopted, not 20 in a conclave, but with open doors, and the resolution published to all the world—that it was known, of course, to the ministers and magistrates of the country, who did not even signify to him, or to anybody else, its illegality or danger—that decency and peace were 25 enjoined and commanded—that the regularity of the procession, and those badges of distinction, which are now cruelly turned into the charge of an hostile array against him, were expressly and publicly directed for the preservation of peace and the prevention of 30 tumult—that while the House was deliberating, he repeatedly entreated them to behave with decency

and peace, and to retire to their houses, though he knew not that he was speaking to the enemies of his cause—that when they at last dispersed, no man thought or imagined that treason had been committed
5—that he retired to bed, where he lay unconscious that ruffians were ruining him by their disorders in the night—that on Monday he published an advertisement, reviling the authors of the riots, and, as the Protestant cause had been wickedly made the pretext
10 for them, solemnly enjoined all who wished well to it to be obedient to the laws (nor has the Crown even attempted to prove that he had either given, or that he afterward gave secret instructions in opposition to that public admonition)—that he afterward begged an
15 audience to receive the King's commands—that he waited on the ministers—that he attended his duty in Parliament—and when the multitude (among whom there was not a man of the associated Protestants) again assembled on the Tuesday, under pretense of
20 the Protestant cause, he offered his services, and read a resolution of the House to them, accompanied with every expostulation which a zeal for peace could possibly inspire—that he afterward, in pursuance of the King's direction, attended the magistrates in their
25 duty, honestly and honorably exerting all his powers to quell the fury of the multitude ; a conduct which, to the dishonor of the Crown, has been scandalously turned against him, by criminating him with protections granted publicly in the coach of the Sheriff of
30 London, whom he was assisting in his office of magistracy ; although protections of a similar nature were, to the knowledge of the whole Privy Council, granted

by Mr. Fisher himself, who now stands in my presence unaccused and unreproved, but who, if the Crown that summoned him durst have called him, would have dispersed to their confusion the slightest imputation of guilt.

5

What, then, has produced this trial for high treason, or given it, when produced, the seriousness and solemnity it wears? What but the inversion of all justice, by judging from *consequences*, instead of from *causes* and *designs*? What but the artful manner in which 10 the Crown has endeavored to blend the petitioning in a body, and the zeal with which an animated disposition conducted it, with the melancholy crimes that followed? crimes which the shameful indolence of our magistrates—which the total extinction of all police 15 and government suffered to be committed in broad day, and in the delirium of drunkenness, by an unarmed banditti, without a head—without plan or object—and without a refuge from the instant gripe of justice: a banditti with whom the associated Prot- 20 estants and their president had no manner of connection, and whose cause they overturned, dishonored, and ruined.

How unchristian, then, is it to attempt, without evidence, to infect the imaginations of men who are 25 sworn, dispassionately and disinterestedly, to try the trivial offense of assembling a multitude with a petition to repeal a law (which has happened so often in all our memories), by blending it with the fatal catastrophe, on which every man's mind may be supposed 30 to retain some degree of irritation! O fie! O fie! Is the intellectual seat of justice to be thus impiously

shaken? Are your benevolent propensities to be thus disappointed and abused? Do they wish you, while you are listening to the evidence, to connect it with unforeseen consequences, in spite of reason and truth? Is it their object to hang the millstone of prejudice around his innocent neck to sink him? If there be such men, may Heaven forgive them for the attempt, and inspire you with fortitude and wisdom to discharge your duty with calm, steady, and reflecting minds!

Gentlemen, I have no manner of doubt that you will.³¹ I am sure you cannot but see, notwithstanding my great inability, increased by a perturbation of mind (arising, thank God! from no dishonest cause), that there has been not only no evidence on the part of the Crown to fix the guilt of the late commotions upon the prisoner, but that, on the contrary, we have been able to resist the probability, I might almost say the possibility of the charge, not only by living witnesses, whom we only ceased to call because the trial would never have ended, but by the evidence of all

³¹ "This peroration is remarkable for the quiet and subdued tone which reigns throughout it. A less skilful advocate would have closed with a powerful appeal to the feelings of the jury, but Mr. Erskine, with that quick instinct which enabled him to read the emotions of men in their countenances, saw that his cause was gained. He chose, therefore, to throw over his concluding remarks the appearance of a perfect understanding between him and the jury that the verdict of acquittal was already made up in their minds, so that any appeal to their feelings would be wholly out of place. In his closing sentence, therefore, he does not ask a decision in his favor but takes it as a matter of course."—*Goodrich.*

the blood that has paid the forfeit of that guilt already ; an evidence that I will take upon me to say is the strongest and most unanswerable which the combination of natural events ever brought together since the beginning of the world for the deliverance of the 5 oppressed : since, in the late numerous trials for acts of violence and depredation, though conducted by the ablest servants of the Crown, with a laudable eye to the investigation of the subject which now engages us, no one fact appeared which showed any plan, any 10 object, any leader ; since, out of forty-four thousand persons who signed the petition of the Protestants, not one was to be found among those who were convicted, tried, or even apprehended on suspicion ; and since, out of all the felons who were let loose from prisons, 15 and who assisted in the destruction of our property, not a single wretch was to be found who could even attempt to save his own life by the plausible promise of giving evidence to-day.

What can overturn such a proof as this ? Surely a 20 good man might, without superstition, believe that such a union of events was something more than natural, and that a Divine Providence was watchful for the protection of innocence and truth.

I may now, therefore, relieve you from the pain of 25 hearing me any longer, and be myself relieved from speaking on a subject which agitates and distresses me. Since Lord George Gordon stands clear of every hostile act or purpose against the Legislature of his country, or the properties of his fellow-subjects—since 30 the whole tenor of his conduct repels the belief of the *traitorous intention* charged by the indictment—my

task is finished. I shall make no address to your passions. I will not remind you of the long and rigorous imprisonment he has suffered ; I will not speak to you of his great youth, of his illustrious birth, and of his uniformly animated and generous zeal in Parliament for the Constitution of his country. Such topics might be useful in the balance of a doubtful case ; yet, even then, I should have trusted to the honest hearts of Englishmen to have felt them without excitation. At present, the plain and rigid rules of justice and truth are sufficient to entitle me to your verdict.

PERSUASION.

Henry Ward Beecher.

Born 1813. Died 1887.

SPEECH DELIVERED IN PHILHARMONIC HALL, LIVERPOOL, OCTOBER 16, 1863.

[When Mr. Beecher went to England in 1863, English friends of the North urged him to speak publicly for Northern interests. They felt that as champions of the North they had been treated with contempt and vilification, and that unless he, as a prominent Abolitionist, should recognize their efforts, they were lost. Moreover Parliament, appealed to publicly to declare for the Southern Confederacy, was willing, but not sure of the non-voting English, who held great power. Therefore, friends of the South had arranged to have orators go through the manufacturing districts for the purpose of enlisting the sympathies of the laboring classes. Mr. Beecher spoke with decided success at Manchester and Glasgow in the face of great and organized opposition, and at Edinburgh with little disturbance. The effect of these three speeches was widely felt. It looked as though the backbone of opposition had been broken ; but really the mob-spirit was only resting before making a final and more desperate effort.

Liverpool was the headquarters of the Southern sympathizers, and a great many Southern men were in the city. The feeling was very strong that if Mr. Beecher should succeed there, he would win the day ; and a determined and desperate effort was to be made to prevent the delivery of the speech. The streets were placarded with abusive and scurrilous posters, urging Englishmen to "see that he gets the welcome he deserves." On the morning of the 16th the leading papers came out with violent and false editorials against Mr. Beecher. It was openly declared that if b-

should dare to address the meeting, he would never leave the hall alive. It was well known that the mob was armed ; not so well known that a small armed band of young men were in a commanding position at the right of the stage, determined, if any outbreak occurred, to protect Mr. Beecher.

The great hall was packed to the crushing point. For some moments before the time fixed for the commencement of the proceedings there were cat-calls, groans, cheers, and hisses, and it was evident that a strong force of the pro-Southern (or at least of the anti-Beecher) party had congregated in front of the gallery and at the lower end of the body of the hall. When Mr. Beecher stepped on the platform, cheer rolled after cheer, and in the pauses in the hurrahing the hissing was tremendous. The uproar was long kept up, but finally the chairman, by appealing to the audience as Englishmen to stand up for fair play and not to withhold justice from a stranger, quieted it. Mr. Beecher was evidently prepared for some opposition ; but he could hardly have expected that his appearance at the front of the platform would rouse one portion of the audience to a high state of enthusiasm, and cause the other portion to approach almost a state of frenzy. For some time it was doubtful whether he would be allowed to speak ; but those who sat near him and observed his firmly compressed lips and imperturbable demeanor, saw at once that it would require something more than noise and spasmodic hisses to cause Mr. Beecher to lose heart. He stood calmly at the edge of the platform, waiting for the noise to cease. At last there was a lull, and the chairman made another appeal to the meeting for fair play. His assurance that Mr. Beecher, after his speech, would answer any questions which anyone might care to ask was not very favorably received, and a series of disturbances followed. When the scuffling had partly subsided, the chairman expressed his determination to preserve order by calling in, if necessary, the aid of the police. This announcement produced something like order, and Mr. Beecher took up the advantage and began his address.

After Mr. Beecher had spoken amid almost constant interruption for three hours his voice failed him, and he was forced to say, as he ended his speech, that he could not answer any questions

unless there was perfect order. He replied in comparative quiet to one or two written questions, but when the disturbance was renewed, Mr. Beecher sat down. The speech, however, had been delivered, and was reported in full next day in the papers.— (“Biography of H. W. Beecher,” by W. C. Beecher and Rev. S. Scoville, pp. 406–26.)]

[FOR more than twenty-five years I have been made perfectly familiar with popular assemblies in all parts of my country except the extreme South. There has not for the whole of that time been a single day of my life when it would have been safe for me to go 5 South of Mason’s and Dixon’s line in my own country, and all for one reason : my solemn, earnest, persistent testimony against that which I consider to be the most atrocious thing under the sun—the system of American slavery in a great free republic.] [Cheers.] 10 I have passed through that early period when right of free speech was denied to me. Again and again I have attempted to address audiences that, for no other crime than that of free speech, visited me with all manner of contumelious epithets ; and now since 15 I have been in England, although I have met with greater kindness and courtesy on the part of most than I deserved, yet, on the other hand, I perceive that the Southern influence prevails to some extent in England. [Applause and uproar.] It is my old 20 acquaintance ; I understand it perfectly¹—[laughter]

¹ Evidently only the general outline of this speech could have been arranged by Beecher before he spoke, for many places show that a phrase or a sentence sprang to his lips as the suggestion of the moment. All the introductory matter to “There are two 25 dominant races,” details of the argument, methods of appeal, and the appeals themselves, must have come spontaneously as the

—and I have always held it to be an unfailing truth that where a man had a cause that would bear examination he was perfectly willing to have it spoken about. [Applause.] And when in Manchester I saw those 5 huge placards : “ Who is Henry Ward Beecher ? ”— [laughter, cries of “ Quite right,” and applause.]— and when in Liverpool I was told that there were those blood-red placards, purporting to say what Henry Ward Beecher had said, and calling upon 10 Englishmen to suppress free speech—I tell you what I thought. I thought simply this : “ I am glad of it.” [Laughter.] Why ? Because if they had felt perfectly secure, that *you* are the minions of the South and the slaves of slavery, they would have been perfectly still. [Applause and uproar.] And, therefore, when I saw so much nervous apprehension that, if I were permitted to speak—[hisses and applause]—when I found they were afraid to have me speak— [hisses, laughter, and “ No, no ! ”]—when I found that 15 they considered my speaking damaging to their cause —[applause]—when I found that they appealed from facts and reasonings to mob law [applause and uproar] —I said, no man need tell me what the heart and secret counsel of these men are. They tremble and 20 are afraid.² [Applause, laughter, hisses, “ No, no ! ”]

speaker watched his great unruly audience, coaxing it, urging it toward one or two statements which he wished them to hear. The quickness with which he took advantage of any change in the mood of his audience ; the aptness of his retorts, his jests, his 25 illustrations ; show how genuine was his self-possession, how great his mastery of extemporaneous speaking.

² There are boldness and skill in the way Beecher here used the placards of his enemies as an unanswerable argument against

and a voice : "New York mob."] Now, personally, it is a matter of very little consequence to me whether I speak here to-night or not. [Laughter and cheers.] But, one thing is very certain, if you do permit me to speak here to-night you will hear very plain talking. 5 [Applause and hisses.] You will not find a man—[interruption]—you will not find me to be a man that dared to speak about Great Britain three thousand miles off, and then is afraid to speak to Great Britain when he stands on her shores. [Immense applause 10 and hisses.] And if I do not mistake the tone and temper of Englishmen, they had rather have a man who opposes them in a manly way—[applause from all parts of the hall]—than a sneak that agrees with them in an unmanly way. [Applause and "Bravo !"] 15 Now, if I can carry you with me by sound convictions, I shall be immensely glad—[applause]; but if I cannot carry you with me by facts and sound arguments, I do not wish you to go with me at all; and all that I ask is simply FAIR PLAY. [Applause, and a voice : 20 "You shall have it too."]

Those of you who are kind enough to wish to favor my speaking—and you will observe that my voice is slightly husky, from having spoken almost every night in succession for some time past,—those 25 who wish to hear me will do me the kindness simply to sit still, and to keep still; and I and my friends the Secessionists will make all the noise. [Laughter.]

There are two dominant races in modern history— 30 them, and roused in the audience a feeling that an effort had been made to trick them.

the Germanic and the Romanic races.³ The Germanic races tend to personal liberty, to a sturdy individualism, to civil and to political liberty. The Romanic race tends to absolutism in government; it is clan-
5 nish; it loves chieftains; it develops a people that crave strong and showy governments to support and plan for them. The Anglo-Saxon race belongs to the great German family, and is a fair exponent of its peculiarities. The Anglo-Saxon carries self-govern-
10 ment and self-development with him wherever he goes. He has popular GOVERNMENT and popular INDUSTRY; for the effects of a generous civil

³ In this speech Beecher first tried to win a hearing by making his audience feel that he was undaunted, determined, sincere, ready
15 in speech, and by appealing to the innate love of all Englishmen for fair play. Then, carefully avoiding any reference to the great moral reasons why Englishmen should have supported the North, and all the objections to the course of the North that must bring exciting debate, he sought some interest of his audience to which
20 he could appeal with some certainty of a hearing. This he found in the pocket-books of the manufacturers and the men employed by them. Knowing that the men, at least, believed that the South gave them a market for their goods, he devoted himself to showing that a free South would give them a far greater market. Boldly
25 taking for his central idea the very opinion on which the opposition to him most rested, he disposed of it before touching for a moment on great moral reasons for supporting the North, and before taking up some of the objections to the course of the North that must meet him. Wherever he spoke, Beecher selected with great care
30 the interest to which he wished to appeal. In Manchester he discussed the effect of slavery on manufacturing interests; in Glasgow, where the blockade runners were building and the laboring classes were in a way bribed by their work to sympathize with the South, he spoke of the degrading effect on labor of the growth of slavery; in Edinburgh, a literary center, he spoke of the philosophy, the history of slavery. — *The*

liberty are not seen a whit more plain in the good order, in the intelligence, and in the virtue of a self-governing people, than in their amazing enterprise and the scope and power of their creative industry. The power to create riches is just as much a part of 5 the Anglo-Saxon virtues as the power to create good order and social safety. The things required for prosperous labor, prosperous manufactures, and prosperous commerce are three. First, liberty; second, liberty; third, liberty. [Hear, hear!] Though 10 these are not merely the same liberty, as I shall show you. First, there must be liberty to follow those laws of business which experience has developed, without imposts or restrictions or governmental intrusions. Business simply wants to be let alone. [Hear, 15 hear!] Then, secondly, there must be liberty to distribute and exchange products of industry in any market without burdensome tariffs, without imposts, and without vexatious regulations. There must be these two liberties—liberty to create wealth, as the 20 makers of it think best, according to the light and experience which business has given them; and then liberty to distribute what they have created without unnecessary vexatious burdens. The comprehensive law of the ideal industrial condition of the world is 25 free manufacture and free trade. [Hear, hear! A voice: "The Morrill tariff." Another voice: "Monroe."] I have said there were three elements of liberty. The third is the necessity of an intelligent and free race of customers. There must be freedom 30 among producers; there must be freedom among the distributors; there must be freedom among the cus-

tomers. It may not have occurred to you that it makes any difference what one's customers are, but it does in all regular and prolonged business. The condition of the customer determines how much he will buy, determines of what sort he will buy. Poor and ignorant people buy little and that of the poorest kind. The richest and the intelligent, having the more means to buy, buy the most, and always buy the best. Here, then, are the three liberties : liberty of the producer, liberty of the distributor, and liberty of the consumer. The first two need no discussion ; they have been long thoroughly and brilliantly illustrated by the political economists of Great Britain and by her eminent statesmen ; but it seems to me that enough attention has not been directed to the third ; and, with your patience, I will dwell upon that for a moment, before proceeding to other topics.

It is a necessity of every manufacturing and commercial people that their customers should be very wealthy and intelligent. Let us put the subject before you in the familiar light of your own local experience. To whom do the tradesmen of Liverpool sell the most goods at the highest profit ? To the ignorant and poor, or to the educated and prosperous ? [A voice : "To the Southerners." Laughter.] The poor man buys simply for his body ; he buys food, he buys clothing, he buys fuel, he buys lodging. His rule is to buy the least and the cheapest that he can. He goes to the store as seldom as he can ; he brings away as little as he can ; and he buys for the least he can. [Much laughter.] Poverty is not a misfortune to the poor only who suffer it, but it is more or less a mis-

fortune to all with whom he deals. On the other hand, a man well off—how is it with him? He buys in far greater quantity. He can afford to do it; he has the money to pay for it. He buys in far greater variety, because he seeks to gratify not merely physical wants, 5 but also mental wants. He buys for the satisfaction of sentiment and taste, as well as of sense. He buys silk, wool, flax, cotton; he buys all metals—iron, silver, gold, platinum; in short he buys for all necessities, and all substances. But that is not all. He buys a 10 better quality of goods. He buys richer silks, finer cottons, higher grained wools. Now a rich silk means so much skill and care of somebody's that has been expended upon it to make it finer and richer; and so of cotton and so of wool. That is, the price of the 15 finer goods runs back to the very beginning, and remunerates the workman as well as the merchant. Now, the whole laboring community is as much interested and profited as the mere merchant, in this buying and selling of the higher grades in the greater 20 varieties and quantities. The law of price is the skill; and the amount of skill expended in the work is as much for the market as are the goods. A man comes to market and says: "I have a pair of hands," and he obtains the lowest wages. Another man comes and 25 says: "I have something more than a pair of hands; I have truth and fidelity." He gets a higher price. Another man comes and says: "I have something more; I have hands, and strength, and fidelity, and skill." He gets more than either of the others. The 30 next man comes and says: "I have got hands, and strength, and skill, and fidelity; but my hands work

more than that. They know how to create things for the fancy, for the affections, for the moral sentiments"; and he gets more than either of the others. The last man comes and says : " I have all these qualities, and 5 have them so highly that it is a peculiar genius"; and genius carries the whole market and gets the highest price.⁴ [Loud applause.] So that both the workman and the merchant are profited by having purchasers that demand quality, variety, and quantity. Now, if 10 this be so in the town or the city, it can only be so because it is a law. This is the specific development of a general or universal law, and therefore we should expect to find it as true of a nation as of a city like Liverpool. I know that it is so, and you know that it 15 is true of all the world; and it is just as important to have customers educated, intelligent, moral, and rich out of Liverpool as it is in Liverpool. [Applause.] They are able to buy; they want variety, they want the very best; and those are the customers you want. 20 That nation is the best customer that is freest, because freedom works prosperity, industry, and wealth. Great Britain, then, aside from moral considerations, has a direct commercial and pecuniary interest in the liberty, civilization, and wealth of every nation on the 25 globe. [Loud applause.] You also have an interest in this, because you are a moral and religious people. ["Oh, oh!" Laughter and applause.] You desire it from the highest motives; and godliness is profitable in all things, having the promise of the life that now is, 30 as well as of that which is to come; but if there were

⁴ Note here the force and the clearness gained by specific illustration of the general statement "The law of price is the skill," etc.

no hereafter, and if man had no progress in this life, and if there were no question of civilization at all, it would be worth your while to protect civilization and liberty, merely as a commercial speculation. To evangelize has more than a moral and religious import—it comes back to temporal relations. Wherever a nation that is crushed, cramped, degraded under despotism is struggling to be free, you—Leeds, Sheffield, Manchester, Paisley—all have an interest that that nation should be free. When depressed and backward people demand that they may have a chance to rise—Hungary, Italy, Poland—it is a duty for humanity's sake, it is a duty for the highest moral motives, to sympathize with them ; but besides all these there is a material and an interested reason why you should sympathize with them. Pounds and pence join with conscience and with honor in this design. Now, Great Britain's chief want is—what ?

They have said that your chief want is cotton. I deny it. Your chief want is consumers. [Applause and hisses.] You have got skill, you have got capital, and you have got machinery enough to manufacture goods for the whole population of the globe. You could turn out fourfold as much as you do, if you only had the market to sell in. It is not so much the want, therefore, of fabric, though there may be a temporary obstruction of it ; but the principal and increasing want—increasing from year to year—is, where shall we find men to buy what we can manufacture so fast ? [Interruption, and a voice, "The Morrill tariff," and applause.] Before the American war broke out, your warehouses were loaded with goods that you could not sell.

[Applause and hisses.] You had over-manufactured ; what is the meaning of over-manufacturing but this : that you had skill, capital, machinery, to create faster than you had customers to take goods off your hands ?

5 And you know that rich as Great Britain is, vast as are her manufactures, if she could have fourfold the present demand, she could make fourfold riches to-morrow ; and every political economist will tell you that your want is not cotton primarily, but customers.

10 Therefore, the doctrine, how to make customers, is a great deal more important to Great Britain than the doctrine how to raise cotton. It is to that doctrine I ask from you, business men, practical men, men of fact, sagacious Englishmen—to that point I ask a

15 moment's attention. [Shouts of "Oh, oh !" hisses, and applause.] There are no more continents to be discovered. [Hear, hear !] The market of the future must be found—how ? There is very little hope of any more demand being created by new fields. If

20 you are to have a better market there must be some kind of process invented to make the old fields better.

[A voice, "Tell us something new," shouts of "Order," and interruption.] Let us look at it, then. You must civilize the world in order to make a better

25 class of purchasers. [Interruption.] If you were to press Italy down again under the feet of despotism, Italy, discouraged, could draw but very few supplies from you. But give her liberty, kindle schools throughout her valleys, spur her industry, make

30 treaties with her by which she can exchange her wine, and her oil, and her silk for your manufactured goods . and for every effort that you make in that direction

there will come back profit to you by increased traffic with her. [Loud applause.] If Hungary asks to be an unshackled nation—if by freedom she will rise in virtue and intelligence, then by freedom she will acquire a more multifarious industry, which she will 5 be willing to exchange for your manufactures. Her liberty is to be found—where? You will find it in the Word of God, you will find it in the code of history; but you will also find it in the Price Current [Hear, hear!]; and every free nation, every civilized 10 people—every people that rises from barbarism to industry and intelligence, becomes a better customer.

A savage is a man of one story, and that one story a cellar. When a man begins to be civilized he raises another story. When you Christianize and civilize 15 the man, you put story upon story, for you develop faculty after faculty; and you have to supply every story with your productions. The savage is a man one story deep; the civilized man is thirty stories deep. [Applause.] Now, if you go to a lodging-²⁰ house, where there are three or four men, your sales to them may, no doubt, be worth something; but if you go to a lodging-house like some of those which I saw in Edinburgh, which seemed to contain about twenty stories ["Oh, oh!" and interruption], every 25 story of which is full, and all who occupy buy of you—which is the better customer, the man who is drawn out, or the man who is pinched up? [Laughter.] Now, there is in this a great and sound principle of economy. ["Yah, yah!" from the passage outside 30 the hall, and loud laughter.] If the South should be rendered independent—at this juncture mingled

cheering and hissing became immense; half the audience rose to their feet, waving hats and handkerchiefs, and in every part of the hall there was the greatest commotion and uproar.] You have had your
5 turn now; now let me have mine again. [Loud applause and laughter.] It is a little inconvenient to talk against the wind; but after all, if you will just keep good-natured—I am not going to lose my temper; will you watch yours? [Applause.] Besides
10 all that, it rests me, and gives me a chance, you know, to get my breath. [Applause and hisses.] And I think that the bark of those men is worse than their bite. They do not mean any harm—they don't know any better. [Loud laughter, applause, hisses, and
15 continued uproar.] I was saying, when these responses broke in, that it was worth our while to consider both alternatives. What will be the result if this present struggle shall eventuate in the separation of America, and making the South—[loud applause, hisses, hoot-
20 ing, and cries of "Bravo!"]—a slave territory exclusively—[cries of "No, no!" and laughter]—and the North a free territory,—what will be the final result? You will lay the foundation for carrying the slave population clear through to the Pacific Ocean. This
25 is the first step. There is not a man that has been a leader of the South any time within these twenty years that has not had this for a plan. It was for this that Texas was invaded, first by colonists, next by marauders, until it was wrested from Mexico. It
30 was for this that they engaged in the Mexican War itself, by which the vast territory reaching to the Pacific was added to the Union. Never for a moment

have they given up the plan of spreading the American institutions, as they call them, straight through toward the West, until the slave, who has washed his feet in the Atlantic, shall be carried to wash them in the Pacific. [Cries of "Question," and uproar.] There! 5 I have got that statement out, and you cannot put it back. [Laughter and applause.] Now, let us consider the prospect. If the South becomes a slave empire, what relation will it have to you as a customer? [A voice: "Or any other man." Laughter.] It 10 would be an empire of twelve millions of people. Now, of these, eight millions are white, and four millions black. [A voice: "How many have you got?" Applause and laughter. Another voice: "Free your own slaves!"] Consider that one-third of the whole 15 are the miserably poor, unbuying blacks. [Cries of "No, no!" "Yes, yes!" and interruption.] You do not manufacture much for them. [Hisses, "Oh!" "No."] You have not got machinery coarse enough. [Laughter, and "No."] Your labor is too skilled by 20 far to manufacture bagging and linsey-woolsey. [A Southerner: "We are going to free them, every one."] Then you and I agree exactly. [Laughter.] One other third consists of a poor, unskilled, degraded white population; and the remaining one-third, which 25 is a large allowance, we will say, intelligent and rich.

Now here are twelve million of people, and only one-third of them are customers that can afford to buy the kind of goods that you bring to market. [Interruption and uproar.] My friends, I saw a man once, 30 who was a little late at a railway station, chase an express train. He did not catch it. [Laughter] If

you are going to stop this meeting, you have got to stop it before I speak ; for after I have got the things out, you may chase as long as you please—you would not catch them. [Laughter and interruption.] But there is luck in leisure ; I'm going to take it easy. [Laughter.] Two-thirds of the population of the Southern States to-day are non-purchasers of English goods. [A voice : "No, they are not ;" "No, no !" and uproar.] Now you must recollect another fact—namely, that this is going on clear through to the Pacific Ocean ; and if by sympathy or help you establish a slave empire, you sagacious Britons—["Oh, oh !" and hooting]—if you like it better, then, I will leave the adjective out—[laughter, Hear ! and applause]—are busy in favoring the establishment of an empire from ocean to ocean that should have fewest customers and the largest non-buying population. [Applause, "No, no !" A voice : "I thought it was the happy people that populated fastest."]

Now, what can England make for the poor white population of such a future empire, and for her slave population ? What carpets, what linens, what cottons can you sell them ? What machines, what looking-glasses, what combs, what leather, what books, what pictures, what engravings ? [A voice : "We'll sell them ships."] You may sell ships to a few, but what ships can you sell to two-thirds of the population of poor whites and blacks ? [Applause.] A little bagging and a little linsey-woolsey, a few whips and manacles, are all that you can sell for the slave. [Great applause and uproar.] This very day, in the slave States of America there are eight millions out of

twelve millions that are not, and cannot be your customers from the very laws of trade. [A voice : "Then how are they clothed ?" and interruption]. . .

But I know that you say, you cannot help sympathizing with a gallant people. [Hear, hear!] They 5 are the weaker people, the minority ; and you cannot help going with the minority who are struggling for their rights against the majority. Nothing could be more generous, when a weak party stands for its own legitimate rights against imperious pride and power, 10 than to sympathize with the weak. But who ever sympathized with a weak thief, because three constables had got hold of him ? [Hear, hear!] And yet the one thief in three policemen's hands is the weaker party. I suppose you would sympathize with 15 him. [Hear, hear ! laughter, and applause.] Why, when that infamous king of Naples—Bomba, was driven into Gaeta by Garibaldi with his immortal band of patriots, and Cavour sent against him the army of Northern Italy, who was the weaker party 20 then ? The tyrant and his minions ; and the majority was with the noble Italian patriots, struggling for liberty. I never heard that Old England sent deputations to King Bomba, and yet his troops resisted bravely there. [Laughter and interruption.] To-day 25 the majority of the people of Rome is with Italy. Nothing but French bayonets keeps her from going back to the kingdom of Italy, to which she belongs. Do you sympathize with the minority in Rome or the majority in Italy ?⁵ [A voice : " With Italy."] 30

⁵ Here Beecher, knowing that sympathy in England for the Italian struggle for independence was strong, made a *reductio ad absurdum*.

To-day the South is the minority in America, and they are fighting for *independence*! For what? [Uproar. A voice : "Three cheers for independence!" and hisses.] I could wish so much bravery had a better cause, and that so much self-denial had been less deluded ; that the poisonous and venomous doctrine of State rights might have been kept aloof ; that so many gallant spirits, such as Jackson, might still have lived. [Great applause and loud cheers, again and again renewed.] The force of these facts, historical and incontrovertible, cannot be broken, except by diverting attention by an attack upon the North. It is said that the North is fighting for Union, and not for emancipation. The North is fighting for Union, for that ensures emancipation. [Loud cheers, "Oh, oh !" "No, no !" and cheers.] A great many men say to ministers of the Gospel : "You pretend to be preaching and working for the love of the people. Why, you are all the time preaching for the sake of the Church." What does the minister say ? "It is by means of the Church that we help the people," and when men say that we are fighting for the Union, I too say we are fighting for the Union. [Hear, hear ! and a voice : "That's right."] But the motive determines the value ; and why are we fighting for the Union ? Because we never shall forget the testimony of our enemies. They have gone off declaring that the Union in the hands of the North was fatal to slavery. [Loud applause.] There is testimony in court for you. [A voice : "See that," and laughter.] . . .

ad absurdum of the principle of his opponents by an illustration of which he could speak without fear of hostile interruption.

In the first place I am ashamed to confess that such was the thoughtlessness—[interruption]—such was the stupor of the North—[renewed interruption]—you will get a word at a time ; to-morrow will let folks see what it is you don't want to hear—that for 5 a period of twenty-five years she went to sleep, and permitted herself to be drugged and poisoned with the Southern prejudice against black men. [Applause and uproar.] The evil was made worse, because, when any object whatever has caused anger between 10 political parties, a political animosity arises against that object, no matter how innocent in itself ; no matter what were the original influences which excited the quarrel. Thus the colored man has been the football between the two parties in the North, 15 and has suffered accordingly. I confess it to my shame. But I am speaking now on my own ground, for I began twenty-five years ago, with a small party, to combat the unjust dislike of the colored man. [Loud applause, dissension, and uproar. The inter- 20 ruption at this point became so violent that the friends of Mr. Beecher throughout the hall rose to their feet, waving hats and handkerchiefs, and renewing their shouts and applause. The interruption lasted some minutes.] Well, I have lived to see a total revolution 25 in the Northern feeling—I stand here to bear solemn witness of that. It is not my opinion ; it is my knowledge. [Great uproar.] Those men who undertook to stand up for the rights of all men—black as well as white—have increased in number ; and now what 30 party in the North represents those men that resist the evil prejudices of past years ? The Republicans

are that party. [Loud applause.] And who are those men in the North that have oppressed the negro? They are the *Peace Democrats*; and the prejudice for which in England you are attempting to punish me, is a prejudice raised by the men who have opposed me all my life. These pro-slavery Democrats abuse the negro. I defended him, and they mobbed me for doing it. Oh, justice! [Loud laughter, applause, and hisses.] This is as if a man should commit an assault, maim and wound a neighbor, and a surgeon being called in should begin to dress his wounds, and by and by a policeman should come and collar the surgeon and haul him off to prison on account of the wounds which he was healing.

15 Now, I told you I would not flinch from anything. I am going to read you some questions that were sent after me from Glasgow, purporting to be from a workingman. [Great interruption.] If those pro-slavery interrupters think they will tire me out, they will do more than eight millions in America could. [Applause and renewed interruption.] I was reading a question on your side too. "Is it not a fact that in most of the Northern States laws exist precluding negroes from equal civil and political rights with the whites?"
25 That in the State of New York the negro has to be the possessor of at least \$250 worth of property to entitle him to the privileges of a white citizen? That in some of the Northern States the colored man, whether bond or free, is by law excluded altogether, 30 and not suffered to enter the State limits, under severe penalties? and is not Mr. Lincoln's own State one of them? and in view of the fact that the

twenty million dollars compensation which was promised to Missouri in aid of emancipation was defeated in the last Congress (the strongest Republican Congress that ever assembled), what has the North done toward emancipation?" Now, then, there's a dose for you. [A voice: "Answer it."] And I will address myself to the answering of it. And first, the bill for emancipation in Missouri, to which this money was denied, was a bill which was drawn by what we call "log-rollers," who inserted in it an enormously disproportioned price for the slaves. The Republicans offered to give them ten million dollars for the slaves in Missouri, and they outvoted it because they could not get twelve million dollars. Already half the slave population had been "run" down South, and yet they came up to Congress to get twelve million dollars for what was not worth ten millions, nor even eight millions. Now as to those States that had passed "black" laws, as we call them; they are filled with Southern emigrants.²⁰ The southern parts of Ohio, the southern part of Indiana, where I myself lived for years, and which I knew like a book, the southern part of Illinois, where Mr. Lincoln lives—[great uproar]—these parts are largely settled by emigrants from Kentucky, Tennessee, Georgia, Virginia, and North Carolina, and it was their vote, or the Northern votes pandering for political reasons to theirs, that passed in those States the infamous "black" laws; and the Republicans in these States have a record, black and white, as having opposed these laws in every instance as "infamous." Now as to

the State of New York ; it is asked whether a negro is not obliged to have a certain freehold property, or a certain amount of property, before he can vote. It is so still in North Carolina and Rhode Island for 5 *white* folks—it is so in New York State. [Mr. Beecher's voice slightly failed him here, and he was interrupted by a person who tried to imitate him. Cries of "Shame !" and " Turn him out ! "] I am not undertaking to say that these faults of the North, which 10 were brought upon them by the bad example and influence of the South, are all cured ; but I do say that they are in *process* of cure which promises, if unimpeded by foreign influence, to make all such odious distinctions vanish.

15 There is another fact that I wish to allude to—not for the sake of reproach or blame, but by way of claiming your more lenient consideration—and that is, that slavery was entailed upon us by your action.⁶ [Hear, hear!] Against the earnest protests of the 20 colonists the then government of Great Britain—I will concede not knowing what were the mischiefs—ignorantly, but in point of fact, forced slave traffic on the unwilling colonists. [Great uproar, in the midst of which one individual was lifted up and carried out 25 of the room amid cheers and hisses.]

The CHAIRMAN : If you would only sit down no disturbance would take place.

6 The similarity of this attempt of Mr. Beecher's to make his audience partly responsible for an evil condition of affairs in America to Lord Chatham's effort, p. 7, to shame his hearers by pointing out the source of the spirit of resistance of the colonists, should be noticed

'The disturbance having subsided,

MR. BEECHER said : I was going to ask you, suppose a child is born with hereditary disease ; suppose this disease was entailed upon him by parents who had contracted it by their own misconduct, would it be fair that those parents that had brought into the world the diseased child, should rail at the child because it was diseased ? [“No, no !”] Would not the child have a right to turn round and say : “Father, it was your fault that I had it, and you ought to be pleased to be patient with my deficiencies.” [Applause and hisses, and cries of “Order !” Great interruption and great disturbance here took place on the right of the platform ; and the chairman said that if the persons around the unfortunate individual who had caused the disturbance would allow him to speak alone, but not assist him in making the disturbance, it might soon be put an end to. The interruption continued until another person was carried out of the hall.] Mr. Beecher continued : I do not ask that you should justify slavery in us, because it was wrong in you two hundred years ago ; but having ignorantly been the means of fixing it upon us, now that we are struggling with mortal struggles to free ourselves from it, we have a right to your tolerance, your patience, and charitable constructions.

No man can unveil the future ; no man can tell what revolutions are about to break upon the world ; no man can tell what destiny belongs to France, nor to any of the European powers ; but one thing is certain, that in the exigencies of the future there will be combinations and recombinations, and that those

nations that are of the same faith, the same blood, and the same substantial interests, ought not to be alienated from each other, but ought to stand together. [Immense cheering and hisses.] I do not
5 say that you ought not to be in the most friendly alliance with France or with Germany; but I do say that your own children, the offspring of England, ought to be nearer to you than any people of strange tongue.
10 [A voice : "Degenerate sons," applause and hisses ; another voice : "What about the *Trent*?"] If there had been any feelings of bitterness in America, let me tell you that they had been excited, rightly or wrongly, under the impression that Great Britain was
15 going to intervene between us and our own lawful struggle. [A voice : "No!" and applause.] With the evidence that there is no such intention all bitter feelings will pass away. [Applause.] We do not agree with the recent doctrine of neutrality as a question of law. But it is past, and we are not disposed
20 to raise that question. We accept it now as a fact, and we say that the utterance of Lord Russell at Blairgowrie—[Applause, hisses, and a voice : "What about Lord Brougham?"]—together with the declaration of the government in stopping war-steamers
25 here—[Great uproar, and applause]—has gone far toward quieting every fear and removing every apprehension from our minds. [Uproar and shouts of applause.] And now in the future it is the work of every good man and patriot not to create divisions,
30 but to do the things that will make for peace. ["Oh, oh!" and laughter.] On our part it shall be done. [Applause and hisses, and "No, no!"] On your

part it ought to be done ; and when in any of the convulsions that come upon the world, Great Britain finds herself struggling single-handed against the gigantic powers that spread oppression and darkness —[Applause, hisses, and uproar]—there ought to 5 be such cordiality that she can turn and say to her first-born and most illustrious child, “Come !” [Hear, hear ! applause, tremendous cheers, and uproar.] I will not say that England cannot again, as hitherto, single-handed manage any power—[applause 10 and uproar]—but I will say that England and America together for religion and liberty—[A voice : “Soap, soap,” uproar, and great applause]—are a match for the world. [Applause ; a voice : “They don’t want any more soft soap.”] Now, gentlemen and ladies—15 [A voice : “Sam Slick” ; and another voice : “Ladies and gentlemen, if you please”]—when I came I was asked whether I would answer questions, and I very readily consented to do so, as I had in other places ; but I will tell you it was because I expected to have 20 the opportunity of speaking with some sort of ease and quiet. [A voice : “So you have.”] I have for an hour and a half spoken against a storm—[Hear, hear !]—and you yourselves are witnesses that, by the interruption, I have been obliged to strive with 25 my voice, so that I no longer have the power to control this assembly. [Applause.] And although I am in spirit perfectly willing to answer any question, and more than glad of the chance, yet I am by this very unnecessary opposition to-night incapacitated physically from doing it. Ladies and gentlemen, I bid 30 you good-evening.

Lord Macaulay.

Born 1800. Died 1859.

SPEECH DELIVERED IN THE HOUSE OF COMMONS,
FEBRUARY 5, 1841.¹

[On the 29th of January, 1841, Mr. Sergeant Talfourd obtained leave to bring in a bill to extend the term of copyright in a book to sixty years, reckoned from the death of the writer. “In 1814, the term during which the right of printing a book was to continue private property had been fixed at twenty-eight years from the date of publication. The shortness of this term had always been regarded as a grievance by authors and by publishers, and was beginning to be so regarded by the world at large. ‘The family of Sir Walter Scott,’ says Miss Martineau in her ‘History of England,’ ‘stripped by his great losses, might be supposed to have an honorable provision in his splendid array of works, which the world was still buying as eagerly as ever; but the copyright of “Waverley” was about to expire; and there was no one who could not see the injustice of transferring to the public a property so evidently sacred as theirs.’

“An arrangement which bore hardly upon the children of the great Scotchman, whose writings had been popular and profitable from the first, was nothing less than cruel in the case of authors who, after fighting a lifelong battle against the insensibility of

¹ What should, perhaps, most be noted in this speech are the careful introduction, the probative effect of the steadily concrete treatment of the case, and the work in refutation, both special and general. Indeed, this speech may well be analyzed with a class that is studying pp. 109-125 of the “Principles of Argumentation,” Ginn & Co.

their countrymen, had ended by creating a taste for their own works. Wordsworth's poetry was at length being freely bought by a generation which he himself had educated to enjoy it ; but, as things then stood, his death would at once rob his heirs of all share in the produce of the 'Sonnets' and the 'Ode to Immortality,' and would leave them to console themselves as they best might with the copyright of the 'Prelude.' Southey (firmly possessed, as he was, with the notion that posterity would set the highest value upon those among his productions which living men were the least disposed to purchase) had given it to be understood that, in the existing state of the law, he should undertake no more works of research like the 'History of Brazil,' and no more epic poems on the scale of 'Madoc' and 'Roderick.' But there was nothing which so effectually stirred the sympathies of men in power, and persuaded their reason, as a petition presented to the House of Commons by 'Thomas Carlyle, a writer of books'; which began by humbly showing 'That your petitioner has written certain books, being incited thereto by certain innocent and laudable considerations'; which proceeded to urge 'that this his labor has found hitherto, in money or money's worth, small recompense or none; that he is by no means sure of its ever finding recompense; but thinks that, if so, it will be at a distant time, when he, the laborer, will probably no longer be in need of money, and those dear to him will still be in need of it'; and which ended by a prayer to the House to forbid 'extraneous persons, entirely unconcerned in this adventure of his, to steal from him his small winnings, for a space of sixty years at the shortest. After sixty years, unless your honorable House provide otherwise, they may begin to steal.'

" Macaulay . . . induced a thin House to reject the bill by a few votes. [45 to 38.] Talfourd, in the bitterness of his soul, exclaimed that Literature's own familiar friend, in whom she trusted, and who had eaten of her bread, had lifted up his heel against her. . . . But none can refuse a tribute of respect to a man who, on high grounds of public expediency, thought himself bound to employ all that he possessed of energy and ability on the task of preventing himself from being placed in a position to found a fortune, which by the year 1919, might well have ranked among

the largest funded estates in the country."—*Life and Letters of Lord Macaulay*. G. O. Trevelyan; vol. ii. pp. 119–121. Harper & Bros., 1896.]

THOUGH, Sir, it is in some sense agreeable to approach a subject with which political animosities have nothing to do, I offer myself to your notice with some reluctance. It is painful to me to take a course which 5 may possibly be misunderstood or misrepresented as unfriendly to the interests of literature and literary men. It is painful to me, I will add, to oppose my honorable and learned friend on a question which he has taken up from the purest motives, and which he 10 regards with a parental interest. These feelings have hitherto kept me silent when the law of copyright has been under discussion. But as I am, on full consideration, satisfied that the measure before us will, if adopted, inflict grievous injury on the public, without 15 conferring any compensating advantage on men of letters, I think it my duty to avow that opinion and to defend it.

The first thing to be done, Sir, is to settle on what principles the question is to be argued. Are we free 20 to legislate for the public good, or are we not? Is this a question of expediency, or is it a question of right? Many of those who have written and petitioned against the existing state of things treat the question as one of right. The law of nature, according to them, 25 gives to every man a sacred and indefeasible property in his own ideas, in the fruits of his own reason and imagination. The legislature has indeed the power to take away this property, just as it has the power to pass an act of attainder for cutting off an innocent

man's head without a trial. But, as such an act of attainer would be legal murder, so would an act invading the right of an author to his copy be, according to these gentlemen, legal robbery.

Now, Sir, if this be so, let justice be done, cost 5 what it may. I am not prepared, like my honorable and learned friend, to agree to a compromise between right and expediency, and to commit an injustice for the public convenience. But I must say, that his theory soars far beyond the reach of my faculties. It 10 is not necessary to go, on the present occasion, into a metaphysical inquiry about the origin of the right of property; and certainly nothing but the strongest necessity would lead me to discuss a subject so likely to be distasteful to the House. I agree, I own, with 15 Paley in thinking that property is the creature of the law, and that the law which creates property can be defended only on this ground, that it is a law beneficial to mankind. But it is unnecessary to debate that point. For, even if I believed in a natural right of 20 property, independent of utility and anterior to legislation, I should still deny that this right could survive the original proprietor. Few, I apprehend, even of those who have studied in the most mystical and sentimental schools of moral philosophy, will be disposed 25 to maintain that there is a natural law of succession older and of higher authority than any human code. If there be, it is quite certain that we have abuses to reform much more serious than any connected with the question of copyright. For this natural law can 30 be only one; and the modes of succession in the Queen's dominions are twenty. To go no further than

England, land generally descends to the eldest son. In Kent the sons share and share alike. In many districts the youngest takes the whole. Formerly a portion of a man's personal property was secured to his family ; and it was only of the residue that he could dispose by will. Now, he can dispose of the whole by will ; but you limited his power, a few years ago, by enacting that the will should not be valid unless there were two witnesses. If a man dies intestate his personal property generally goes according to the statute of distributions ; but there are local customs which modify that statute. Now which of all these systems is conformed to the eternal standard of right ? Is it primogeniture, or gavelkind,² or borough English ?³ Are wills *jure divino* ? Are the two witnesses *jure divino* ? Might not the *pars rationabilis* of our old law have a fair claim to be regarded as of celestial institution ? Was the statute of distributions enacted in Heaven long before it was adopted by Parliament ? Or is it to Custom of York, or to Custom of London that this pre-eminence belongs ? Surely, Sir, even those who hold that there is a natural right of property must admit that rules prescribing the manner in which the effects of deceased persons shall be distributed are purely arbitrary, and originate altogether in the will of the legislature. If so, Sir, there is no controversy between my honorable and learned friend and myself as to the principles on which this question is to be argued. For the existing law gives an author

30 ² Inheritance by all the sons together.

³ "Descent to the youngest son instead of the eldest, or, if the owner leaves no son, to the youngest brother."—*Century Dict.*

copyright during his natural life ; nor do I propose to invade that privilege, which I should, on the contrary, be prepared to defend strenuously against any assailant. The only point in issue between us is, how long after an author's death the State shall recognize⁵ a copyright in his representatives and assigns ; and it can, I think, hardly be disputed by any rational man that this is a point which the legislature is free to determine in the way which may appear to be most conducive to the general good.

10

We may now, therefore, I think, descend from these high regions, where we are in danger of being lost in the clouds, to firm ground and clear light. Let us look at this question like legislators, and after fairly balancing conveniences and inconveniences,¹⁵ pronounce between the existing law of copyright and the law now proposed to us. The question of copyright, Sir, like most questions of civil prudence, is neither black nor white, but gray. The system of copyright has great advantages and great disadvantages ; and it is our business to ascertain what these are, and then to make an arrangement under which the advantages may be as far as possible secured, and the disadvantages as far as possible excluded. The charge which I bring against my honorable and learned friend's bill is this, that it leaves the advantages nearly what they are at present, and increases the disadvantages at least fourfold.

The advantages arising from a system of copyright are obvious. It is desirable that we should have a³⁰ supply of good books : we cannot have such a supply unless men of letters are liberally remunerated ; and

The least objectionable way of remunerating them is by means of copyright. You cannot depend for literary instruction and amusement on the leisure of men occupied in the pursuits of active life. Such men may occasionally produce compositions of great merit. But you must not look to such men for works which require deep meditation and long research. Works of that kind you can expect only from persons who make literature the business of their lives. Of these persons few will be found among the rich and the noble. The rich and the noble are not impelled to intellectual exertion by necessity. They may be impelled to intellectual exertion by the desire of distinguishing themselves, or by the desire of benefiting the community. But it is generally within these walls that they seek to signalize themselves and to serve their fellow-creatures. Both their ambition and their public spirit, in a country like this, naturally take a political turn. It is then on men whose profession is literature, and whose private means are not ample, that you must rely for a supply of valuable books. Such men must be remunerated for their literary labor. And there are only two ways in which they can be remunerated. One of those ways is patronage ; the other is copyright.

There have been times in which men of letters looked, not to the public, but to the government, or to a few great men, for the reward of their exertions. It was thus in the time of Mæcenas and Pollio⁴ at

30 ⁴Caius Asinius Pollio. Born about 76 B. C. Died 6 A. D. Politician, commander, author. He was a patron of Vergil and Horace.—*Century Dict.*

Rome, of the Medici at Florence, of Lewis the Fourteenth in France, of Lord Halifax⁵ and Lord Oxford⁶ in this country. Now, Sir, I well know that there are cases in which it is fit and graceful, nay, in which it is a sacred duty to reward the merits or to relieve⁵ the distresses of men of genius by the exercise of this species of liberality. But these cases are exceptions. I can conceive no system more fatal to the integrity and independence of literary men than one under which they should be taught to look for their daily¹⁰ bread to the favor of ministers and nobles. I can conceive no system more certain to turn those minds which are formed by nature to be the blessings and ornaments of our species into public scandals and pests.

15

We have, then, only one resource left. We must betake ourselves to copyright, be the inconveniences of copyright what they may. Those inconveniences, in truth, are neither few nor small. Copyright is monopoly, and produces all the effects which the general²⁰ voice of mankind attributes to monopoly. My honorable and learned friend talks very contemptuously of those who are led away by the theory that monopoly

⁵ Charles Montague. Born 1661. Died 1715. "Statesman, financier, and poet. Royal Society, 1695-98. Collaborator of²⁵ Prior in the 'City Mouse and Country Mouse' (1687)." — *Century Dict.*

⁶ Robert Harley. Born 1661. Died 1724. "Statesman. He left a valuable collection of MSS., increased by his son and eventually acquired by the government for the British Museum.³⁰ A selection of rare pamphlets from his library was published under the title of the Harleian Miscellany, 1744-46." — *Century Dict.*

makes things dear. That monopoly makes things dear is certainly a theory, as all the great truths which have been established by the experience of all ages and nations, and which are taken for granted in all reasonings, may be said to be theories. It is a theory in the same sense in which it is a theory that day and night follow each other, that lead is heavier than water, that bread nourishes, that arsenic poisons, that alcohol intoxicates. If, as my honorable and learned friend seems to think, the whole world is in the wrong on this point, if the real effect of monopoly is to make articles good and cheap, why does he stop short in his career of change?⁷ Why does he limit the operation of so salutary a principle to sixty years? Why does he consent to anything short of a perpetuity? He told us that in consenting to anything short of a perpetuity he was making a compromise between extreme right and expediency. But if his opinion about monopoly be correct, extreme right and expediency would coincide. Or rather why should we not restore the monopoly of the East India trade to the East India Company? Why should we not revive all those old monopolies which, in Elizabeth's reign, galled our fathers so severely that, maddened by intolerable wrong, they opposed to their sovereign a resistance before which her haughty spirit quailed for the first and for the last time? Was it the cheapness and excellence of commodities that then so violently stirred the indignation of the English people. I believe, Sir, that I may safely take it for granted that the effect of

⁷ Note the skillful use of the *reductio ad absurdum* in this paragraph.

monopoly generally is to make articles scarce, to make them dear, and to make them bad. And I may with equal safety challenge my honorable friend to find out any distinction between copyright and other privileges of the same kind ; any reason why a monopoly 5 of books should produce an effect directly the reverse of that which was produced by the East India Company's monopoly of tea, or by Lord Essex's monopoly of sweet wines. Thus, then, stands the case. It is good that authors should be remunerated ; and the 10 least exceptionable way of remunerating them is by a monopoly. Yet monopoly is an evil. For the sake of the good we must submit to the evil ; but the evil ought not to last a day longer than is necessary for the purpose of securing the good. 15

Now, I will not affirm, that the existing law is perfect, that it exactly hits the point at which the monopoly ought to cease ; but this I confidently say, that the existing law is very much nearer that point than the law proposed by my honorable and 20 learned friend. For consider this ; the evil effects of the monopoly are proportioned to the length of its duration. But the good effects for the sake of which we bear the evil effects are by no means proportioned to the length of its duration. A monopoly of 25 sixty years produces twice as much evil as a monopoly of thirty years, and thrice as much evil as a monopoly of twenty years. But it is by no means the fact that a posthumous monopoly of sixty years gives to an author thrice as much pleasure and thrice as strong a 30 motive as a posthumous monopoly of twenty years. On the contrary, the difference is so small as to be

hardly perceptible. We all know how faintly we are affected by the prospect of very distant advantages, even when they are advantages which we may reasonably hope that we shall ourselves enjoy. But
5 an advantage that is to be enjoyed more than half a century after we are dead, by somebody, we know not by whom, perhaps by somebody unborn, by somebody utterly unconnected with us, is really no motive at all to action. It is very probable, that in the course of
10 some generations, land in the unexplored and unmapped heart of the Australasian continent will be very valuable. But there is none of us who would lay down five pounds for a whole province in the heart of the Australasian continent. We know, that neither
15 we, nor anybody for whom we care, will ever receive a farthing of rent from such a province. And a man is very little moved by the thought that in the year 2000 or 2100, somebody who claims through him will employ more shepherds than Prince Esterhazy,⁸ and will
20 have the finest house and gallery of pictures at Victoria or Sydney. Now, this is the sort of boon which my honorable and learned friend holds out to authors. Considered as a boon to them, it is a mere nullity; but, considered as an impost on the public, it is no
25 nullity, but a very serious and pernicious reality. I will take an example. Dr. Johnson died fifty-six years ago. If the law were what my honorable and learned friend wishes to make it, somebody would now have

⁸ This apparently refers to Prince Nikolaus von Esterhazy, 30 "a Hungarian magnate, noted as a patron of the arts and sciences." Born 1765. Died, 1833. His son was ambassador at London, 1815-18 and 1830-38.—*Century Dict.*

the monopoly of Dr. Johnson's works. Who that somebody would be it is impossible to say ; but we may venture to guess. I guess, then, that it would have been some bookseller, who was the assign of another bookseller, who was the grandson of a third 5 bookseller, who had bought the copyright from Black Frank, the doctor's servant and residuary legatee, in 1785 or 1786. Now, would the knowledge that this copyright would exist in 1841 have been a source of gratification to Johnson ? Would it have stimulated 10 his exertions ? Would it have once drawn him out of his bed before noon ? Would it have once cheered him under a fit of the spleen ? Would it have induced him to give us one more allegory, one more life of a poet, one more imitation of Juvenal ? I firmly be- 15 lieve not. I firmly believe that a hundred years ago, when he was writing our debates for the *Gentleman's Magazine*, he would very much rather have had two-pence to buy a plate of shin of beef at a cook's shop underground. Considered as a reward to him, the differ- 20 ence between a twenty years' term and a sixty years' term of posthumous copyright would have been nothing or next to nothing. But is the difference nothing to us ? I can buy "Rasselas" for sixpence ; I might have had to give five shillings for it. I can buy the Dictionary, 25 the entire genuine Dictionary, for two guineas, perhaps for less ; I might have had to give five or six guineas for it. Do I grudge this to a man like Dr. Johnson ? Not at all. Show me that the prospect of this boon roused him to any vigorous effort, or sus- 30 tained his spirits under depressing circumstances, and I am quite willing to pay the price of such an object,

heavy as that price is. But what I do complain of is that my circumstances are to be worse, and Johnson's none the better ; that I am to give five pounds for what to him was not worth a farthing.

5 The principle of copyright is this. It is a tax on readers for the purpose of giving a bounty to writers. The tax is an exceedingly bad one ; it is a tax on one of the most innocent and most salutary of human pleasures ; and never let us forget, that a tax on innocent pleasures is a premium on vicious pleasures. I admit, however, the necessity of giving a bounty to genius and learning. In order to give such a bounty, I willingly submit even to this severe and burdensome tax. Nay, I am ready to increase the tax, if it can be shown that 15 by so doing I should proportionally increase the bounty. My complaint is, that my honorable and learned friend doubles, triples, quadruples the tax, and makes scarcely any perceptible addition to the bounty. Why, Sir, what is the additional amount of taxation which would 20 have been levied on the public for Dr. Johnson's works alone, if my honorable and learned friend's bill had been the law of the land ? I have not data sufficient to form an opinion. But I am confident that the taxation on his Dictionary alone would have 25 amounted to many thousands of pounds. In reckoning the whole additional sum which the holders of his copyrights would have taken out of the pockets of the public during the last half century at twenty thousand pounds, I feel satisfied that I very greatly 30 underrate it. Now, I again say that I think it but fair that we should pay twenty thousand pounds in consideration of twenty thousand pounds' worth of

pleasure and encouragement received by Dr. Johnson. But I think it very hard that we should pay twenty thousand pounds for what he would not have valued at five shillings.

My honorable and learned friend dwells on the 5 claims of the posterity of great writers. Undoubtedly, Sir, it would be very pleasing to see a descendant of Shakespeare living in opulence on the fruits of his great ancestor's genius. A house maintained in splendor by such a patrimony would be a more 10 interesting and striking object than Blenheim is to us, or than Strathfieldsaye will be to our children. But, unhappily, it is scarcely possible that, under any system, such a thing can come to pass. My honorable and learned friend does not propose that copy- 15 right shall descend to the eldest son, or shall be bound up by irrevocable entail. It is to be merely personal property. It is therefore highly improbable that it will descend during sixty years or half that term from parent to child. The chance is that more 20 people than one will have an interest in it. They will in all probability sell it and divide the proceeds. The price which a bookseller will give for it will bear no proportion to the sum which he will afterward draw from the public, if his speculation proves successful. 25 He will give little, if anything, more for a term of sixty years than for a term of thirty or five-and-twenty. The present value of a distant advantage is always small ; but when there is great room to doubt whether a distant advantage will be any advantage at 30 all, the present value sinks to almost nothing. Such is the inconstancy of the public taste that no sensible

man will venture to pronounce, with confidence, what the sale of any book published in our days will be in the years between 1890 and 1900. The whole fashion of thinking and writing has often undergone a change 5 in a much shorter period than that to which my honorable and learned friend would extend posthumous copyright. What would have been considered the best literary property in the earlier part of Charles the Second's reign? I imagine Cowley's poems. 10 Overleap sixty years, and you are in the generation of which Pope asked, "Who now reads Cowley?" What works were ever expected with more impatience by the public than those of Lord Bolingbroke, which appeared, I think, in 1754. In 1814, no bookseller 15 would have thanked you for the copyright of them all, if you had offered it to him for nothing. What would Paternoster Row give now for the copyright of Hayley's "Triumphs of Temper,"⁹ so much admired

⁹ Born 1745. Died 1820. "Hayley made more than one attempt to succeed as a dramatic author, but first won fame by his poetical 'Essays on Painting, History, and Epic Poetry' and by his poem the 'Triumphs of Temper.' The success of these poems was partly attributable to the general dearth of poetic talent at the time, but they had also certain external qualities fitted to secure 25 for them at least a temporary popularity; and his notes to his poetical essays also displayed very extensive reading, and exerted considerable influence in directing attention in England to the literature of Italy and Spain. On the death of Warton, Hayley was offered the laureateship, but declined it. The estimation in 30 which he was held, even during his lifetime, depended perhaps more upon his acquirements and widely cultivated tastes and his position in society than on his achievements in literature."—*Ency. Brit.*

within the memory of many people still living? I say, therefore, that, from the very nature of literary property, it will almost always pass from an author's family; and I say, that the price given for it to the family will bear a very small proportion to the tax⁵ which the purchaser, if his speculation turns out well, will in the course of a long series of years levy on the public.

If, Sir, I wished to find a strong and perfect illustration of the effects which I anticipate from long copyright, I should select,—my honorable and learned friend will be surprised,—I should select the case of Milton's granddaughter. As often as this bill has been under discussion, the fate of Milton's granddaughter has been brought forward by the advocates of monopoly.¹⁵ My honorable and learned friend has repeatedly told the story with great eloquence and effect. He has dilated on the sufferings, on the abject poverty of this ill-fated woman, the last of an illustrious race. He tells us that, in the extremity of her distress, Garrick²⁰ gave her a benefit, that Johnson wrote a prologue, and that the public contributed some hundreds of pounds. Was it fit, he asks, that she should receive, in this eleemosynary form, a small portion of what was in truth a debt? Why, he asks, instead of obtaining a²⁵ pittance from charity, did she not live in comfort and luxury on the proceeds of the sale of her ancestor's works? But, Sir, will my honorable and learned friend tell me that this event, which he has so often and so pathetically described, was caused by the shortness of the term of copyright?³⁰ Why, at that time, the duration of copyright was longer than even he, at

present, proposes to make it. The monopoly lasted not sixty years, but forever. At the time at which Milton's granddaughter asked charity, Milton's works were the exclusive property of a bookseller. Within 5 a few months of the day on which the benefit was given at Garrick's theater, the holder of the copyright of "Paradise Lost"—I think it was Tonson—applied to the Court of Chancery for an injunction against a bookseller, who had published a cheap edition of the 10 great epic poem, and obtained the injunction. The representation of "Comus" was, if I remember rightly, in 1750; the injunction in 1752. Here, then, is a perfect illustration of the effect of long copyright. Milton's works are the property of a single publisher. 15 Everybody who wants them must buy them at Tonson's shop, and at Tonson's price. Whoever attempts to undersell Tonson is harassed with legal proceedings. Thousands who would gladly possess a copy of "Paradise Lost" must forego that great enjoyment. And 20 what, in the meantime, is the situation of the only person for whom we can suppose that the author, protected at such a cost to the public, was at all interested? She is reduced to utter destitution. Milton's works are under a monopoly. Milton's 25 granddaughter is starving. The reader is pillaged; but the writer's family is not enriched. Society is taxed doubly. It has to give an exorbitant price for the poems; and it has at the same time to give alms to the only surviving descendant of the poet. 30 But this is not all. I think it right, Sir, to call the attention of the House to an evil, which is perhaps more to be apprehended when an author's copyright

remains in the hands of his family, than when it is transferred to booksellers. I seriously fear that, if such a measure as this should be adopted, many valuable works will be either totally suppressed or grievously mutilated. I can prove that this danger is 5 not chimerical ; and I am quite certain that, if the danger be real, the safeguards which my honorable and learned friend has devised are altogether nugatory. That the danger is not chimerical may easily be shown. Most of us, I am sure, have known persons 10 who, very erroneously as I think, but from the best motives, would not choose to reprint Fielding's novels, or Gibbon's "History of the Decline and Fall of the Roman Empire." Some gentlemen may perhaps be of opinion, that it would be as well if "Tom Jones" and 15 Gibbon's History were never reprinted. I will not, then, dwell on these or similar cases. I will take cases respecting which it is not likely that there will be any difference of opinion here ; cases, too, in which the danger of which I now speak is not matter of 20 supposition, but matter of fact. Take Richardson's novels. Whatever I may, on the present occasion, think of my honorable and learned friend's judgment as a legislator, I must always respect his judgment as a critic. He will, I am sure, say that Richardson's 25 novels are among the most valuable, among the most original works in our language. No writings have done more to raise the fame of English genius in foreign countries. No writings are more deeply pathetic. No writings, those of Shakespeare excepted, 30 show more profound knowledge of the human heart. As to their moral tendency, I can cite the

most respectable testimony. Dr. Johnson describes Richardson as one who had taught the passions to move at the command of virtue. My dear and honored friend, Mr. Wilberforce, in his celebrated 5 religious treatise, when speaking of the unchristian tendency of the fashionable novels of the eighteenth century, distinctly excepts Richardson from the censure. Another excellent person whom I can never mention without respect and kindness, Mrs. Hannah 10 More, often declared in conversation, and has declared in one of her published poems, that she first learned from the writings of Richardson those principles of piety by which her life was guided. I may safely say that books celebrated as works of art through the 15 whole civilized world, and praised for their moral tendency by Dr. Johnson, by Mr. Wilberforce, by Mrs. Hannah More, ought not to be suppressed. Sir, it is my firm belief, that if the law had been what my honorable and learned friend proposes to make it, they 20 would have been suppressed. I remember Richardson's grandson well ; he was a clergyman in the city of London ; he was a most upright and excellent man ; but he had conceived a strong prejudice against works of fiction. He thought all novel-reading not 25 only frivolous but sinful. He said,—this I state on the authority of one of his clerical brethren who is now a bishop,—he said that he had never thought it right to read one of his grandfather's books. Suppose, Sir, that the law had been what my honorable and learned 30 friend would make it. Suppose that the copyright of Richardson's novels had descended, as might well have been the case, to this gentleman. I firmly believe,

that he would have thought it sinful to give them a wide circulation. I firmly believe, that he would not for a hundred thousand pounds have deliberately done what he thought sinful. He would not have reprinted them. And what protection does my honorable and learned friend give to the public in such a case? Why, Sir, what he proposes is this. if a book is not reprinted during five years, any person who wishes to reprint it may give notice in the London *Gazette*; the advertisement must be repeated three times; a year 5 must elapse; and then, if the proprietor of the copyright does not put forth a new edition, he loses his exclusive privilege. Now, what protection is this to the public? What is a new edition? Does the law define the number of copies that makes an edition?¹⁵ Does it limit the price of a copy? Are twelve copies on large paper, charged at thirty guineas each, an edition? It has been usual, when monopolies have been granted, to prescribe numbers and to limit prices. But I do not find that my honorable and learned friend 20 proposes to do so in the present case. And, without some such provision, the security which he offers is manifestly illusory. It is my conviction that, under such a system as that which he recommends to us, a copy of "Clarissa" would have been as rare as an Aldus or a Caxton.²⁵

I will give another instance. One of the most instructive, interesting, and delightful books in our language is Boswell's "Life of Johnson." Now it is well known that Boswell's eldest son considered this book,³⁰ considered the whole relation of Boswell to Johnson, as a blot in the escutcheon of the family. He thought

not perhaps altogether without reason, that his father had exhibited himself in a ludicrous and degrading light. And thus he became so sore and irritable that at last he could not bear to hear the "Life of Johnson" mentioned. Suppose that the law had been what my honorable and learned friend wishes to make it. Suppose that the copyright of Boswell's "Life of Johnson" had belonged, as it well might, during sixty years, to Boswell's eldest son. What would have been the consequence? An unadulterated copy of the finest biographical work in the world would have been as scarce as the first edition of Camden's "Britannia."

These are strong cases. I have shown you that, if the law had been what you are now going to make it, 15 the finest prose work of fiction in the language, the finest biographical work in the language, would very probably have been suppressed. But I have stated my case weakly. The books which I have mentioned are singularly inoffensive books; books not touching on 20 any of those questions which drive even wise men beyond the bounds of wisdom. There are books of a very different kind, books which are the rallying points of great political and religious parties. What is likely to happen if the copyright of one of these books should 25 by descent or transfer come into the possession of some hostile zealot? I will take a single instance. It is only fifty years since John Wesley died; and all his works, if the law had been what my honorable and learned friend wishes to make it, would now have been 30 the property of some person or other. The sect founded by Wesley is the most numerous, the wealthiest, the most powerful, the most jealous of sects. In

every parliamentary election it is a matter of the greatest importance to obtain the support of the Wesleyan Methodists. Their numerical strength is reckoned by hundreds of thousands. They hold the memory of their founder in the greatest reverence ;⁵ and not without reason, for he was unquestionably a great and a good man. To his authority they constantly appeal. His works are in their eyes of the highest value. His doctrinal writings they regard as containing the best system of theology ever deduced¹⁰ from Scripture. His journals, interesting even to the common reader, are peculiarly interesting to the Methodist ; for they contain the whole history of that singular polity which, weak and despised in its beginning, is now, after the lapse of a century, so strong,¹⁵ so flourishing, and so formidable. The hymns to which he gave his imprimatur are a most important part of the public worship of his followers. Now, suppose that the copyright of these works should belong to some person who holds the memory of Wesley and the doctrines and discipline of the Methodists in abhorrence. There are many such persons. The Ecclesiastical Courts are at this very time sitting on the case of a clergyman of the Established Church who refused Christian burial to a child baptized by a²⁰ Methodist preacher. I took up the other day a work which is considered as among the most respectable organs of a large and growing party in the Church of England, and there I saw John Wesley designated as a foresworn priest. Suppose that the works of²⁵ Wesley were suppressed. Why, Sir, such a grievance would be enough to shake the foundations of Govern-

ment. Let gentlemen who are attached to the Church reflect for a moment what their feelings would be if the Book of Common Prayer were not to be reprinted for thirty or forty years, if the price of a Book of 5 Common Prayer were run up to five or ten guineas. And then let them determine whether they will pass a law under which it is possible, under which it is probable, that so intolerable a wrong may be done to some sect consisting perhaps of half a million of 10 persons.

I am so sensible, Sir, of the kindness with which the House has listened to me, that I will not detain you longer. I will only say this, that if the measure before us should pass, and should produce one-tenth 15 part of the evil which it is calculated to produce, and which I fully expect it to produce, there will soon be a remedy, though of a very objectionable kind. Just as the absurd acts which prohibited the sale of game were virtually repealed by the poacher, just as many 20 absurd revenue acts have been virtually repealed by the smuggler, so will this law be virtually repealed by piratical booksellers. At present the holder of copy-right has the public feeling on his side. Those who invade copyright are regarded as knaves who take the 25 bread out of the mouths of deserving men. Every-body is well pleased to see them restrained by the law, and compelled to refund their ill-gotten gains. No tradesmen of good repute will have anything to do with such disgraceful transactions. Pass this law ; 30 and that feeling is at an end. Men very different from the present race of piratical booksellers will soon infringe this intolerable monopoly. Great masses of

capital will be constantly employed in the violation of the law. Every art will be employed to evade legal pursuit ; and the whole nation will be in the plot. On which side indeed should the public sympathy be when the question is whether some book as popular as ⁵ "Robinson Crusoe," or the "Pilgrim's Progress," shall be in every cottage, or whether it shall be confined to the libraries of the rich for the advantage of the great-grandson of a bookseller who, a hundred years before, drove a hard bargain for the copyright with the ¹⁰ author when in great distress? Remember too that, when once it ceases to be considered as wrong and discreditable to invade literary property, no person can say where the invasion will stop. The public seldom makes nice distinctions. The wholesome ¹⁵ copyright which now exists will share in the disgrace and danger of the new copyright which you are about to create. And you will find that, in attempting to impose unreasonable restraints on the reprinting of the works of the dead, you have, to a great extent, ²⁰ annulled those restraints which now prevent men from pillaging and defrauding the living. If I saw, Sir, any probability that this bill could be so amended in the Committee that my objections might be removed, I would not divide the House in this stage.¹⁰ But I am ²⁵

¹⁰ "Admonished, but not deterred, by Sergeant Talfourd's reverse, Lord Mahon next year took up the cause of his brother authors, and introduced a bill in which he proposed to carry out the objectionable principle, but to carry it less far than his predecessor. Lord Mahon was for giving protection for five-and-³⁰ twenty years, reckoned from the date of death ; and his scheme was regarded with favor, until Macaulay came forward with a

so fully convinced that no alteration which would not seem insupportable to my honorable and learned friend, could render his measure supportable to me, that I must move, though with regret, that this bill be
5 read a second time this day six months.

counter-scheme, giving protection for forty-two years, reckoned from the date of publication. He unfolded his plan in a speech, terse, elegant, and vigorous; as amusing as an essay of Elia, and as convincing as a proof of Euclid. When he resumed his seat,
10 Sir Robert Peel walked across the floor, and assured him that the last twenty minutes had radically altered his views on the law of copyright. One member after another confessed to an entire change of mind; and, on a question that had nothing to do with party, each change of mind brought a vote with it. The bill was
15 remodeled on the principle of calculating the duration of copyright from the date of publication, and the term of forty-two years was adopted by a large majority."—*Life and Letters of Lord Macaulay*, vol. ii. pp. 121-123.

This second speech is printed pp. 209-216, vol. viii., Macaulay's Works. Longmans, Green & Co., 1875.

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